# The Second Part Of the DISPLAY OF Tyranny; OR REMARKS UPON The Illegal and Arbitrary Proceedings in the Courts of Westminster, and Guild-Hall *London.*

From the Year, 1678. To the Abdication of the late *King James*, in the Year 1688.

In which time, the Rule was, *Quod Principi placuit, Lex esto.*

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BM
MVSEVM
BRITANNICVM

# TO
# The Eminently Deserving and Highly Honoured Sr *Samuel Barnardiston*, Baronet.

*Sir!*

YOu are no more able to deliver your self from the Persecution of a dedication, than you were, in your single Person, to stem the dreadful deluge of *Popery* and *Tyranny*, which very lately brought *Old England* within an Hair's breadth of that utter Ruin that was manifestly impending.

Indeed, when I first took the resolution of inscribing your *honoured Name*, to the first part of my *Scriblings*, I purposed to have petitioned your Licence so to do; but at the time when the thing was finished,

I was at such a great distance from you, that I had not opportunity to do it, and therefore (being no nearer to you at this time) I do implore your Pardon for my presumption therein, and for my repeating that Transgression; and do hope that you will the more readily grant it; when I have made this publick Acknowledgement to the World (in case any thing I have said be deemed offensive, which I hope there cannot) that *Sr Samuel Barnardiston* was no way privy to the writing of the *First*, or of this *Second* part of these *Stories*; and that I can (*upon very good ground*) say, that he doth not, to this day, know who is the *Collector* of them.

Sir! He who is not allowed to use a *Sword* in his *Countries quarrel*, may surely be indulged in crying out *Murder*, *Treason*; when he sees a *Pistol at his Prince's head*, or a *Dagger* at his *Heart*; and having, with grief, beheld that very same

*To-*

*Toryiſm*, which murder'd the beſt of Men, my good *Lord Ruſſell*, and many others of our beſt *Patriots*; to be *rampant* and *impudent*; and as irreconcilably bent againſt the *true Government of England*, which the glorious and moſt *miraculous providence of Heaven*, has lately devolved upon our undoubted rightful *King* and *Queen*, as it was againſt our late *bleſſed Martyrs* for the *Engliſh Liberties*; I could not withhold my ſelf from attempting the ſervice of my Generation (according to my mean capacity) in expoſing thoſe *Principles* and *Practices* which but t'other day had brought the *Kingdom* to the very brink of irreparable ruin; eſpecially, when I ſee at this very day, *the Men who had ſuck'd in that Poiſon, Deſigning and Plotting* (not to *allure*, but) *to dragoon us into* French Bondage.

The truth of it is (*Sr.*) I was much irritated to the proſecution of this Work, by what I met with in

my return from the late *Tryal of Skill* in *Essex*; when those most worthy Gentlemen, *Colonel Mildmay* and Sr. *Fran: Masham* were elected *Knights* for that *County*; I have heard that it hath been an old Observation, that tho' many *Honourable, Reverend* and *Worthy Persons*, have frequently voted against *your self*, in *Suffolk*; and against *Colonel Mildmay* in *Essex*; yet, that it hath been rarely seen, that a *Tory* has voted for either of you: And it is well remembred, that at the time of the mighty strugling between *Popery* and *Christianity* in the *Critical Year* of 1681. the then *Lord Chief Justice Stroggs* sent for many of the *Gentlemen* of *Essex*, and told them that *whatever they did, they must not chuse* Mildmay.

But I have digressed, what I was saying, is, that one Mr. *Rigby* of *Covent Garden* (

*Rigby* was one of the Good and *name him because he stands indicted in*

Essex

Essex *for the Crime I am mentioning)* returning from voting at that Election (upon the 11th of *March* last) & being to a high degree enraged, that *Colonel Mildmay* and Sr. *Francis Masham* were chosen (*for you must know he was of t'other side*) said, that 'twas no matter who carried the day there; But if the King *would not do as they would have him* (*innuendo* himself, & he knows who besides; But I am most certain my *Lord* of *Oxford* doth not) *They would make a King that should do as* They *would have him*: And, this being upon the *Eve* of the *Fast* appointed by their *Majesties Proclamation*, he proceeded, adding, *We must keep a damn'd Fast to morrow, but we will eat Roasted Beef and* True Men, whom the great Care of Sr. *Dudley North* had returned to pass upon my *Lord Russel*'s Life, and he stood in that Pannel within two of *Oneby*, who was last sworn.

This most Loyal Disciple of Sr. *Roger*'s, and design-

ed

ed Jury-man for my Lord *Russel*, (taking Pet because *Colonel Mildmay* was chosen a Parliament Man) must now by all means have a King of his own making, and 'tis six and twenty to one but if the Silly Woman had pledged him *K. James*'s Health, but the next Glass had bin to our *Lord Lewis*, King Elect.

*be Drunk.* He then put a glass of Wine into a very Civil *Woman*'s hand, saying, *Drink King James's Health*; and upon her answering him, *No, I deny that*, but I will drink the Wine; he said, *Damn you for a Bitch, would it might poison you where you stand*; and added, *A Bitch* to deny a *Gentleman* such a Request, *She deserves to be Sacrificed.*

Sr. I cannot upon this occasion of *Health-drinking*, hinder my self from remembring the Case of Mr. *Elias Best*, a substantial *Citizen* (but *one who had been an Ignoramus Juryman*, a great Reproach, and an unpardonable Crime in that day, as

*you (Sr.) very feelingly know)* He was *indicted for the Frolick of drinking to the Pious Memory of Honeſt* Stephen Colledge, and condemned to a *Fine* of 1000 l. to ſtand Three Times in the *Pillory*, and *to give Sureties for the Good Behaviour for Life.* Upon this Judgment he was impriſoned Three Years; to the loſs of a good Trade, and to the ruin of his Health and his Eſtate; and when almoſt ready to expire, he was *graciouſly* pardoned, upon payment of 200 l. to the *Empſon* and *Dudley* of the late *Reign*; *Graham* and *Burton*: 'Tis well for Mr. *Rigby*, that the accurſed Practices of that day, are not to be Preſidents, in the preſent benign and moſt merciful Reign.

Sr! I have no ſiniſter nor mercenary end in emitting theſe Papers to publick view; I write not for reward (for *I gave away as many ſcores of the firſt part of this Tract, as the Printer gave me*, and have not one for my ſelf,) and I ſhould be vaine, to

the highest degree, to expect applause, for so confused and ill digested a Work, as this is; But I have with a good will (tho' in a very feeble manner) brandished my Pen for the service of that *good old Cause* which I ever loved and must love, should it cost me my life, I mean the *Liberties* of *England*; and it hath deeply wounded me, to hear and know so many instances as I do, of the *unpunished* (nay, of the *uncheckt*) *Seditious* and *Trayterous discourses* and *boastings*, of the *Factious* and *Malecontent Party*, which I encounter; (*I mean not* Papists, *for I know not one Person avowedly so, about* London) as tho' the whole *Nation* were ready (as the Men I talk of vainly flatter themselves) *by a unanimous and universal consent, to degenerate and apostatize to* Popery and Slavery: But Methinks they should be too early and too quick in their expectation, that the *English Nation* should no sooner see the Yoke of the *Oppressors*

*ſors* in a moſt wonderful manner broken, by the immediate hand of *Heaven*; but it ſhould tamely ſubmit unto (nay *Court*, with *them*) the intolerable *Yoke* of *France*; and that at a Juncture when it is thrown off, by a *Bigotted Popiſh Prince*, who has been for a long time an unhappy *Inſtrument* in the hands of the *Bloody Tyrant* of *France*, to the *oppreſſing* and *deſtroying* the moſt *antient*, *pure* and *beſt Chriſtians* upon the Face of the Earth, the *Vaudois*.

That we have ſuch a Race of *Animals*, walking, and that *with no more than two Legs apiece*, amongſt us; is too well known to be denyed or diſſembled; and one would think that their Practices, which are ſo groſly evil, and eminently dangerous, ſhould not be countenanced or defended; but (which is to be lamented) they have their powerful *Abettors* and *Patrons*; and therefore, 'tis to be wiſht, that their Edge may be blunted, and their ef-

fronted Impudence duely cenſured.

Sir! As to theſe *Collections* (if that may be any invitation to your throwing away a very few hours upon their peruſal) I do aſſure you, that I have made them, with all due regard to *Truth*; and am not conſcious of one Miſtake or untruth in the whole Work; my Care in that point has put me to much trouble and ſome charge; for where I doubted, I have travelled to receive true and certain Information of matters of Fact; and ſuch Materials as I wanted, which were upon *Record*, I fetcht from thence; and therefore, the certainty of matters here told, muſt atone for the want of Method and delighting Language.

I had the *Promiſe* (*and ſo I thought aſſurance*) of ſome things, at leaſt as valuable, as the beſt things in this Tract can be eſteemed to be; but *ſome Men are too zealouſly intent and buſie in their private Affairs, to be publick-ſpirited* (though I remem-

ber

ber the time when they were eminently ſo) & therefore, (*to touch that Point no further at preſent*) I ſhall only ſay, I have done *Ut potui*; and wiſh that ſome other Perſon, who could have done this to more advantage had undertaken the *Task*; I am (*what I always was, and ever will be*)

SIR

*July* 10th, 1690. } Your Honourer and moſt humbly-devoted Servant.

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## To the Publick-Spirited *READER.*

*'TIs not my deſign in this* Addreſs *to commend this* Pamphlet, *or to invite Thee to throw away thy time or money upon it; for I muſt tell thee truly, that tho' the Matters here treated of are worthy of any Man's conſidering; and are not to be forgotten; yet the Diſadvantages and Diſcouragements which I have been under, in compiling the Hiſtory thereof, have been ſuch; that when thou goeſt to read them, thou wilt, I doubt, meet with diſappointment; and fall ſhort of the ſatisfaction thou mayſt promiſe thy ſelf; for it will appear ſhort, immethodical and very confuſed; but I did my beſt: here is a great deal of matter brought into a narrow compaſs; and the thing had been ſomething valuable, if* ſome

Perſons

Persons had furnished the Materials which they promised; *and others had, in time, found leisure to lend what I at last obtained; but they came late to my hand, so that I could not methodize what thou here findest, better, or otherwise than thou seest: If thou dislikest the* Book, *upon these, or any other Reasons, thou mayst let alone; and then there's no Harm done. And,*

*And after this fair Caution, thou wilt buy and read it, and the nature of the thing should render it any way grateful; and thou canst find in thy heart to employ a little time in a Work of this kind, in wich I have quite tired my self, I do here present thee with Heads sufficient to fill a* Folio *(viz.) The* Tryal *and* Case *of him who is the* best Pattern *for* Magistrates *in* England: *That of the Right Honourable Sr* Thomas Pilkington *(most happily at this time,* Lord Mayor *of* London) *with the* Duke *of* York; *wherein a* Hertfordshire-Jury *gave the* Duke 100000 l. Damages.

*His* Lordship's *Tryal with* Bolsworth, *wherein a* Surry-Jury *gave the* Perfumer 800 l. Damages.

*The* Tryal *of Sr* Patience Ward, *upon a Pretence of* Perjury; *but in truth* for putting the Inscription upon the Monument, *notifying to the Ages to come, that the Papists* burnt *London.*

*The* Tryals *of Sr* Trevor Williams, *Mr* Arnold *and Mr* Colt *with the* Duke *of* Beaufort.

*The* Tryal *of the Grave and most Pious and* highly learned *Mr* Baxter.

*The two* Tryals *of the* Reverend *and eminently learned* Divine, *and incomparable good* English-man, *Mr* Johnson, *the* Confessor *for the* English Liberties

*The* Proceedings *between the* Duke *of* York *and Mr* Covert *of* Chichester; *wherein* 100000 l. *Damages were given to the* Duke.

*The*

# Spirited READER.

*The* Proſecution *of Mr* Aaron Smith, *for his honeſt and undaunted Aſſiſtance of* Stephen Colledge *at* Oxford; *And for his not* Witneſſing *againſt* Colonel Sidney, according to the Advice of Sr *A. P.*

*The* Tryal *of Mr* Gutch *of* Bath, *with a* Biſhop.

*The* Proſecutions *and* Tryals *of Mr* Roſwel *the* Miniſter, *Mr* Whitaker, *Mr* Wilmer, *Mr* Culliford, *Mr* Beſt, *Mr* Samuel Harris, *Mr* Joſeph Brown, *cum multis aliis.*

My good Friend, *I have here cut thee out Work, and therefore not to detain thee from it, I bid thee heartily* Farewell.

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The

# REMARKS

## Upon the *Tryal* of *Mr Laurence Braddon*, & *Mr Hugh Speke*; Upon an *Information*, about the matter of the *Murder*, of the late Right *Honourable Arthur Earl* of *Eſſex*.

THis Excellent Perſon, and right *Noble Peer*, the *Earl* of *Eſſex*, did (to ſay no more) equal the beſt and moſt deſerving of his *Contemporaries*, in zeal and reſolution, ſteadily to aſſert and defend, our *Religion*, *Laws* and *Liberties*; in the day, in which they were moſt highly threatned, and moſt dangerouſly invaded: His *Lordſhip*, and that ſure and never ſhaken Friend to the right *Engliſh Government*, and to the Intereſt of his *Country*; His *Grace* the *Duke* of *Bolton* (then *Marqueſs* of *Winchester*)

were usually (if not always) in the *Chaire*, of the secret *Committees* of the *House* of *Lords*; which inspected the business of the damnable *Popish Plot*, and (which was a Consequent of it) the horrid *Murder* of *Sr Edmundbury Godfrey*; who was made the first Sacrifice to the *Popish* rage, for prying into that *Arcanum*. His *Lordship*, the *Earl* of *Essex*, added also greatly to his *Crimes*, in being *Chaire-man* of that *Committee* of *Lords*, which prepared matters, for the *Tryal* of that great *Conspirator Colman*, the *Duke* of *York*'s *Minion* and *Secretary*. And, he contracted a further and never to be forgiven *Guilt*, in that, soon after the astonishing *dissolution* of the *Parliament*, in *January* 1680, and the *King*'s *Declaration* of his Resolution, to hold the next *Parliament*, upon the 21st of *March* 1680, at *Oxford*; several *Noble Lords* agreed upon a *Petition*, to advise the *King* against that Resolution; and their *Lordship*'s pitched upon the *Earl* of *Essex* to present it; as he did upon the 25th of *January* 1680; and then made a Speech to his *Majesty* which deserves eternal Remembrance; it was to this effect,

☞ That the *Lords* there present, with

other

other *Peers*; observing how unfortunate many *Assemblies* have been, when called remote from *London*; particularly the *Congress* at *Clarendon*, in *Henry* the second's time: Three *Parliaments* at *Oxford* in the time of *Henry* the third; and the *Parliaments* at *Coventry* in *Henry* the sixth's time; with divers others; which have proved fatal to those *Kings*, and brought great mischief on the Kingdom; And considering the *Jealousies* and *Discontents* amongst the *People*: They apprehended, the consequences of a *Parliament* at *Oxford*, might be as fatal to the *King*, and the *Nation*; as those were to the then Reigning *Kings*; and therefore they conceived, they could not answer it to *God*, to his *Majesty*, or to the *People*; If they, being *Peers*, should not offer him their advice, to alter that unseasonable resolution. *The Petition was to this effect*;

That, whereas the *King* by Speeches and *Messages*, to both *Houses*, had rightly represented the dangers threatning his *Majesty* and the *Kingdom*, from the *Plots* of the *Papists*, & the sudden growth of a *Foreign Power*, which could not be

ſtop'd, unleſs by *Parliament*; and an *Union* of *Proteſtants*.

That the *King*, in *April* 1678, having called to his *Council* many honourable and worthy Perſons; and declared, that being ſenſible, *of the evil Effects of a ſingle Miniſtry, or private Advice, or foreign Committee*, for the direction of Affairs; That he would, for the future, refer all things unto that *Council*; and that by their conſtant advice, with the frequent uſe of the *Parliament*, he was reſolved hereafter to Govern; They began to hope to ſee an end of their Miſeries; But,

They ſoon found their expectations fruſtrated, and the *Parliament* diſſolved, before it could perfect what was intended, for their relief and ſecurity; And tho' another was called, yet, by many *Prorogations* it was put off to the 21ſt of *October* paſt.

That, though the *King* then acknowledged, that neither his *Perſon*, nor the *Kingdom* could be ſafe, till the *Plot was gone thorow*; yet the *Parliament* was unexpectedly prorogued on the 10th of *January*, before any ſufficient Order could be taken therein.

That all their juſt and pious endea-

vours

vours to ſave the *Nation* were overthrown; The good *Bills* they had been induſtriouſly preparing, to *unite Proteſtants*, brought to nought; The *Witneſſes* of the *Plot* diſcouraged; Thoſe *foreign Kingdoms* and *States*, who by a happy Conjunction with us, might check the *French Power*, diſheartned, even to ſuch a deſpaire, as may induce them to take Reſolutions fatal to us: The ſtrength and courage of our *Enemies*, both at home and abroad encreaſed; And our ſelves leſt in the utmoſt danger, of ſeeing our *Country* brought into utter Deſolation.

That, in theſe Extremities, they had nothing under *God* to comfort them, but the hopes that the *King* (*touch'd with the Groans of his periſhing* People) would have ſuffered the *Parliament* to meet, at the day to which it was prorogued; and no further interruption ſhould be given to their Proceedings, in order to the ſaving the *Nation*: But, that that failed them too, for the *King*, by the private ſuggeſtions of *Wicked Perſons*, *Favourers of* Popery, *Promoters of* French *deſigns*, *and Enemies to the King and Kingdom* *

[* *Innuendo* Some Body; their Names are (even at this day) worth the knowing, leſt any of them ſhould creep into their preſent *Majeſties Councils*.]

(without the *Advice*, & against the *Opinion* of the *Privy-Council*) dissolved that *Parliament*, and intended to call another to sit at *Oxford*; where neither *Lords* nor *Commons* could be in safety, but would be exposed to the Swords of the *Papists* and their *Adherents*; of whom too many were crept into the *Guards*; That the *Witnesses* against the *Popish Lords* and *Impeached Judges*, could not bear the charge of going thither, nor trust themselves, under the Protection of a *Parliament*, that is it self evidently under the power of *Guards* and *Souldiers*.

The *Petitioners*, out of a just *Abhorrence* of such *pernicious Council* (which the *Authors* dared not to avow) and their *direful apprehensions*, of the Calamities and Miseries that may ensue thereupon; Most humbly prayed and advised, That the *Parliament* might not sit at a place, where it would not be able to act with that freedom, which is necessary; but that it might sit at *Westminster*.

*This Petition was signed,*

| | | | |
|---|---|---|---|
| *Monmouth*, | *Salisbury*, | *Shaftesbury*, | *Grey*, |
| *Kent*, | *Clare*, | *Mordant*, | *Herbert*, |
| *Huntington*, | *Stanford*, | *Eure*, | *Howard*, |
| *Bedford*, | *Essex*, | *Paget*, | *Delamer*. |

This

This humble Application, and moſt neceſſary and ſeaſonable *Advice*, found the ſame entertainment which *King Charles* the ſecond ever gave, to the *Councils* offered to him in favour of the *Proteſtant Religion*, and of the true *Engliſh Government*; however, the honeſt zeal and undaunted Courage of theſe *Noble Lords*, made deep impreſſions upon the Breaſts of all true Lovers of the *Laws and Liberty* of their *Country*; And the *Citizens* of *London*, in *Common-Hall* aſſembled (upon the 4th of *February*, 1680.) ſpoke their Approbation of their *Loraſhip's* Noble Enterprize, in what follows; which was agreed upon, with a general and loud Acclamation of thouſands of *Citizens*.

*To the Worſhipful Slingesby Bethel,* and *Henry Corniſh* Eſquires, *Sheriffs* of *London* and *Middleſex*.

WE *the* Citizens *of the ſaid* City, *in* Common-Hall *aſſembled, having diligently peruſed, the late* Petition *and* Advice, *of ſeveral* Noble Peers *of this* Realm *to his* Majeſty; *whoſe Counſels*

We *humbly conceive, are (in this unhappy* juncture) *highly ſeaſonable, and greatly tending to the ſafety of theſe* Kingdoms: We *do therefore make it our moſt hearty requeſt, that you (in the Name of this* Common-Hall) *will return, to the Right Honourable the* Earl of Eſſex, *and (by him) to the reſt of the* Noble Peers, *the grateful Acknowledgment of this Aſſembly.*

By theſe means, and indeed by the whole Courſe of this *Noble Lord's* Life, which was a ſteady Courſe, of Exemplary unſhaken *Vertue,* and ſhew'd an unalterable affection, to the true *Religion*; and deteſtation of *Tyranny*; He became inſupportable to thoſe, whoſe Study was *Miſchief*; and to whom no *Perſon* was acceptable, but ſuch as they found diſpoſed to *betray* the *Proteſtant Religion*, and the *Rights* of *England*; to their *Popiſh* and *Deſpotick* Deſigns; and therefore from this time, they grew more aſſiduous to contrive his Deſtruction.

The *Conſpirators* well knew, that this *Great Man*, had moſt deſervedly acquired a mighty ſhare, in the hearts of the *People*; And, that as he knew very much of their *Deſigns*; ſo that he was not, by any arts, or allurements, to be *Co-*

*zen'd*

xen'd or *tempted* to a *Complyance* therewith; therefore (as They told the brave *Colonel Sidney*) he muſt dye, that their *Plot* might live; and to avoid the Reproach, of bringing the Son to the *Block*, by that very *Prince*, for whom the *Father* had loſt his Head; and, (which is alſo very probable) *to prevent his diſcovery, of what he could tell, and others knew not*; They condemn him, without a Tryal, and in a moſt barbarous manner *Murder* him in the *Tower*; But, *Heaven* intending to bring this accurſed *Aſſaſſination* of the brave Earl of *Eſſex* to light; a report of very ſuſpitious Circumſtances, in relation to that matter, was inſtantly ſpread, and reached the Ears of Mr *Braddon*; a *Gentleman* of great Integrity and of no leſs Courage; whoſe honeſt Zeal, prompted him to look into that helliſh *Intrigue*; and to endeavour a full diſcovery of that *horrid Villany*; but that Seaſon not allowing it, he and Mr *Speke* were run upon, and with great fury proſecuted, in the manner following.

They were brought to *Tryal*, upon an *Information*, charging them with *Subornation*, and endeavouring to raiſe a belief, that the *Earl of Eſſ.* did not *murder* himſelf.

The

The *Judges*, then in Court, were,
The *Lord Chief Justice Jeffryes*,
*Judge Withens*, and
*Judge Holloway*,

The Jury,

| | |
|---|---|
| Sr *Hugh Middleton*, a Papist. | *Samuel Rouse*, |
| *Thomas Harriot*, | *Hugh Squire*, |
| *Thomas Earsby*, | *Nehem. Arnold*, |
| *Joshua Galliard*, | *John Byfeild*, |
| *Richard Shoreditch*, | *William Waite*, & |
| *Charles Good*, | *James Supple*. |

The *King's Council*, were,
*Attorney General Sawyer*
*Solicitor General Finch*,
*Jenner*, *Recorder of London*,
*Mr Dolben*,
*Mr North*,
*Mr Jones*.

Council for the Defendants, were,
*Mr Wallop*,
*Mr Williams*,
*Mr Thompson*,
*Mr Freke*.

Mr *Dolben* opened the *Information* to this effect, That whereas the *Earl of Essex*

*Eſſex* upon the 10*th* of *July* laſt, was committed to the *Tower* for *Treaſon*, and did there Murder himſelf, as was found by the *Coroner's* Inquiſition; yet, the *Defendants*, deſigning to bring the *Government* to hatred, the 15*th* of *Auguſt*, conſpired to perſwade the *King's Subjects*, that the ſaid *Earl* was Murdered by certain Perſons unknown; and to procure falſe Witneſſes to prove, that he was not *felo de ſe*, but was Murdered; and that they did malitiouſly declare in writing; that Mr *Braddon* was the Perſon that did proſecute the ſaid Murder, to the ſcandal of the *Government*, *&c.*

Then the *Attorney General* brought in Evidence, Sr *Leoline Jenkins* his *Warrant*, for the Commitment of the *Earl* to the *Tower*; and the *Inquiſition* of Mr *Farnham* the *Coroner* taken by this *Jury*. *July* 14*th* 1683. *viz.*

*Samuel Colwel*,
*William Fiſher*,
*Thomas Godſell*,
*Thomas Hunt*,
*Natha. Mountney*,
*Thomas Potter*,
*William How*,
*Robert Burgoyne*,
*Eleazar Wickens*,
*Thomas Hogsfleſh*,
*Henry Cripps*,
*Richard Rudder*,

*William*

| | |
|---|---|
| *William Knipes,* | *William Thackſton,* |
| *John Hudſon,* | *Richard Cliffe,* |
| *John Kettlebeater,* | *Zebediah Prichard,* |
| *Lancelot Coleſon,* | *William Baford,* and |
| *Morgan Cowarne,* | *Theophilus Carter.* |
| *Thomas Bryan,* | |

Which *Jury* had found, that the *Earl of Eſſex* was *Felo de ſe.*

Then, the *Witneſſes* for the *King* being called, Mr *Evans* was ſworn, and the *Attorney General* ſuggeſted, that he and old Mr *Edwards* would prove, that Mr *Braddon* went about and declared, that the *Earl of Eſſex* was Murdered; and that he was the *Proſecutor* of the *Murder*; but neither of them anſwered expectation in that matter.

Mr *Evans* teſtified, that Mr *Edwards* told it to him and others for News, at the *Cuſtom-Houſe* that fore-noon of the day of the *Earl of Eſſex* his death, that his *Son* ſaid, that he ſaw a *Razour thrown out of the* Earl's *Window.* That upon the *Munday* after (which was *July* the 16*th*) Mr *Braddon* came with Mr *Hatſel* to his Houſe, where Mr *Hatſel* ſhewed him the *Coroner's Inquiſition* in Print; which having read, Mr *Evans* told Mr *Hatſel* what

what he had heard from Mr *Edwards* at the *Custom-House*; And he said, that Mr *B.* did not concern himself, or say any thing, though he might hear Mr *Evans* his discourse with Mr *Hatsel*, he being walking about the Room.

Mr *Evans* added, that upon the 17*th* of *July*, Mr *Edwards* and Mr *Braddon* found him in a *Coffee-House*; and Mr *Edwards* then told him, that Mr *Braddon* had been with him, examining his *Son* about a *Razour* that was thrown out of the *Earl of Essex* his Window.

*Mr Edwards* testified, that about ten of the Clock, the day of the *Earl's* death, he was informed by his Family; and by his Son, that same day at noon, that his Son came from the *Tower* about ten of the Clock, and said, that he had seen the *King* and *Duke*, and that the *Earl of Essex* had cut his own Throat; and that the *Boy* saw an hand throw a *Razour* out of the Window; and a *Maid* in a white Hood came out of the House and took it up, and then go in again; and that he heard a noise as of Murder cryed out.

Mr *Edwards* acknowledged, that he told several at the *Custom-House* the same day

day, what the *Lad* had declared; and that Mr *Braddon* came not to make enquiry about it, till *Tuesday* the 17*th* of *July*; before which time he never knew Mr *Braddon*; that he then told him what report the *Boy* brought home; and added, that the *Boy* never denyed it before Mr *Braddon* came, but did afterwards that same day deny it, as his *Wife* and *Daughter* informed him; his Sister having put him into fear about it; and that Mr *Braddon* did not desire the *Boy* to give it under his hand, till he had been there two or three times.

*William Edwards* the *Son*, aged 13 years, was then sworn (his *Father* like a very honest Man charging him in the presence of *Almighty God* to say nothing but the truth) he said, that he told his *Father* that he saw an Hand cast out a *bloody Razour*, and a Maid come out and take it up, and go in again. That Mr *Braddon* asked him what he saw at the *Tower*, and that he told him as he had told his *Father*; and that Mr *Braddon* bad him speak the truth, and wrote down what he told him, and nothing more; and then read it to him; and ask'd him whether it were true, and that he told him,

him, that all that was in the Paper was true, and that he then put his Name to it.

Then, the *Chief Justice and King's Counsel* interrogating him, he said, that he did at first refuse to put his Name to it, because he was afraid of coming into danger; and being further pressed, he added, that the reason why he feared danger was, because what was in the Paper was not true; but confessed that he did not tell *Mr B.* that it was not true, but that his *Mother* was afraid to have him sign it; and declared, upon the question put to him, that *Mr B.* did not offer or promise him any Money.

*Thomas Hawkins, Son of* Dr Hawkins *of the Tower* (Protestant *Confessor* to *Fitz. Harris* the Papist) being produced to contradict *young Edwards*: The *A. General* suggested, that they were together the whole Morning, and that there was no such thing of the *Razour*, as *Edwards* had declared; but this *Lad* only testified that *young Edwards* and he, walked round the *Tower*, as long as the *King* walked; & that when the *King* went into the *Constable's* House, they went to play, & after their play, he left *Edwards* & went home;

home; and that after he had been there a little time, *news* was brought to his *Father*, that the *Earl of Essex* had killed himself; and that thereupon his *Father* went down, and he followed; and after he had been a little while there, *William Edwards* came, and they stood looking up at the Window an hour or two; and went away together; and that he saw no *Razeur* thrown out.

Upon this Mr *A. General*, in a reproachful way said, *My Lord*, This rumour began in a *Fanatick Family*; he might have been justly answered, that *Mr Edwards* his Family, was, and is of as good reputation as one certain *Doctor's* (not to vie with more) where the stifling of such Evidence as ran against the Stream, had been some Years before notoriously practised.

But to return to the matter in hand, is it not most evident, that *Mr Attorney* was not rightly instructed; For 'tis manifest that the *Lads* were parted when the Murder was committed, and the *Razeur* thrown out; the *young Doctor* declaring, that he was in his *Father's* House, when the news of the *Earl's* death came; and then went with his *Father* to the place;

place; and 'tis more then probable, that in the crowd and diſtraction, which muſt neceſſarily be there, he might not at his firſt coming ſee young *Edwards*.

Next Mr *Blathwayte* and Mr *Mon-Stevens* (the *Earl of Sunderland*'s Secretary) were called and ſworn.

*Mr Blathwayte* appeared, rather as an *Advocate*, than a *Witneſs*, againſt *Mr Braddon*.

They teſtified Mr *Braddon*'s bringing the *Information* of young *Edwards*, to my *Lord Sunderland* the *Secretary*'s Office, and that *Edwards* declared before the *King*, that what was contained therein was not true, and yet Mr *Braddon* would proſecute it.

The *Information* was then read, to this following effect, *July* the 18th 1683.

*The Informant ſaith, that on* Friday *the* 13th *inſtant, he heard that the* King *and the* Duke of York, *were going to the* Tower; *and that he went thither to ſee them; and then went about nine of the Clock, to ſee the* Lord Brandon's *Lodgings, and as he was ſtanding between theſe Lodgings, and the* Earl of Eſſex's, *he ſaw an Hand caſt out a bloody* Razour *out of the* Earl's Lodgings,

*and he was going to take it up, but before he came to it, there came a* Maid *running out of* Captain Hawley's *House where the* Earl *lodged, and took up the* Razour, *and carried it into the House; and the* Informant *believes it was the same* Maid, *which he first heard to cry out* Murder; *and saith, that he heard the* Maid *say to some about the Door, after Murder was cryed, that she heard the* Earl of Essex *groan three times that Morning.*

*Sr Henry Capel* was then produced to shew, as the *Council* urged, that *Mr Braddon* prosecuted this matter on his head.

He testified that *Mr Braddon* was twice with him, and that he told *Mr Braddon*, that he was under great grief; and that whatsoever he had to say in the matter, he desired him to acquaint a *Secretary of State* with it.

* *Beech* (who occasioned Mr *Braddon* to be seized

* This very man *Beech*, was the head *Prosecutor* of all *Protestant Dissenters* in the North of *Wiltshire*: and many of them paid him a yearly Tribute to avoid his rage. When his present *Majesty* Landed, he said, that he hoped to see them hang'd that went in to him. But a more famous Story of his Life was; That his *Father* telling him, that never Man

seized in *Wiltshire*; at the time when he went to make enquiry there, about the Reports of the *Earl's* having murdered himself, before he was dead) testified, the taking from Mr *Braddon* a Letter of Mr *Speke's*, to *Sr Robert Atkyns*, which was to this effect, (*viz.*)

was curſed in a *Son*, as he was in him; he replyed, That he knew one who was more unhappy, which was his *Grandfather* in him; upon which occaſion, and for his conſtant courſe of diſobedience, his *Father* deſervedly diſinherited him.

*That the bearer* Mr Braddon, *was a very* honeſt Gentleman; *and it was his fate, to be the only Perſon that proſecuted the* Murder of the Earl of Eſſex: *That he had made a conſiderable diſcovery already of it, though he rowed againſt an hard ſtream.*

*That it could never have fallen on ſo fit a Man; for he had been an hard Student, and was of very good Reputation and Life, and had a great deal of Prudence, and as much Courage as any Man. That* Mr Braddon *went away Poſt towards* Marlborough, *to make ſome further diſcovery; and ſeeing he went into thoſe parts,* Mr Speke *thought it not amiſs for* Mr. B. *to adviſe with* Sr R. Atkyns, *how he had beſt proceed. That he had charged* Mr B. *not to diſcover who he*

*was, leſt it ſhould be known that he had been with* Sr Robert Atkyns; *for he would not for the World that* Sr Robert *ſhould come to any Prejudice for his kindneſs towards them, becauſe they laboured under many Difficulties, as the Tide then ran. He therefore deſired* Sr Robert *to call* Mr B. *by the Name of* Johnſon; *That they did hope to bring the* Earl's Murder *upon the Stage, before they could any of thoſe in the* Tower *to a* Tryal, *That* Sr H. Capel *had told* Mr B. *that it was a thing too great for him. That* Mr B. *had been at great trouble and charge about it, and that as times went he knew few would have undertaken it beſides himſelf.*

*Mr Lewis* of *Marlborough*, being called by *Mr Braddon*, witneſſed, That upon the day of the Earl's Death, riding within three or four Miles of *Andover* (fifty two Miles from *London*) between three and five in the Afternoon, a man told him for news, that he heard the *Earl of Eſſex* had cut his Throat; and that at his going home to *Marlborough* the next day, he told his *Neighbours* what he had heard the day before; and that they thereupon ſaid, It was done but yeſterday, how could you hear it ſo ſoon?

*Mr Feilder* of *Andover* witneſſed, That

That upon the *Wedneſday* and *Thurſday* of the Week, in which the *Earl of Eſſex dyed*, it was the common talk of the Town of *Andover*; † that he had cut his Throat; that the *Women* talked of it, as they came in & out of the Town; and that on the *Saturday* night in that Week, the certain news of it came.

† *Note*, in like manner it was proved in the Tryal of the Lord *Stafford*, that it was reported at a great diſtance, that *Sr Edmundbury Godfrey* had murdered himſelf before it was known at *London* what was become of him.

*Mrs Edwards*, (the *Boys Mother*) teſtified, that the *Boy* came from the *Tower*, and told her, that he had ſeen the *King*, &c. and that the *Earl of Eſſex* had cut his Throat, and then wept; and further ſaid, That he ſaw a *Razour* thrown out at the Window, and was going to take it up, but a ſhort fat Woman came and took it, and went in again, that he told her all this weeping and crying; and never denyed it, till after *Mr Braddon* had been there, and then denyed it upon this occaſion; when *Mr B.* came, his enquiry put them all into a great damp; and after he was gone, the *Boy* being then at School, her *Hus-*

*Ann* said to her Daughter *Sarah*, Don't you say any thing to your *Brother*, and when he comes in, we will talk to him; that her *Daughter* was grievously affrighted thereat, and so amazed, that so soon as the *Boy* came in, *She* told him, that there had been a *Gentleman* to enquire about what he had said; and that he thereupon said to her, Why *Sister*, will any thing of harm come? and upon her answering him, That *She* did not know, but it might be, her *Father* and the *Family* might be ruined; he then denyed what he had said; but at the same time, he came to his *Mother*, and cryed he should be *hanged* (*this was also acknowledged by the* Daughter.)

*Sarah Edwards*, (the *Boy's Sister*) testified, what the *Boy* had declared of seeing the *Razour*, &c. And that *She* told him upon *Tuesday* the 17th of *July*, that a *Gentleman* had been there to enquire about it; and that the *Boy* did thereupon ask her, whether any harm would come of it; and that upon her answering him that *She* could not tell; he did deny what he had declared. That *Mr B.* came again soon after, upon the same day, and found them all daunted upon their

their hearing the *Boy* deny it; and *Mr. Brad.* ask'd him about it; & bad him speak the Truth, telling him, * It was a dreadful thing to be a *Lyar*; and bad him read the 5th of the *Acts*, where he would find, that two were struck dead for telling a *Lye*.

* Indeed *Junian Hicks*, & many others of our *passively Obedient* and *Non-Resisting Gentlemen* of the *Cassock*, have handled many *Texts* of *Scripture* at a very unwarrantable rate, to decoy Mankind, to the foolish Exchange of their glorious title to *Freedom*, for that of *Slavery*: But *we* have here the first instance, of a *Man's preaching* up the *lawfulness of Perjury*, from the dreadful Judgment of *Heaven* upon *Ananias* & *Sapphira*.

She further testified, that Mr *Braddon* came the next day (*the Wednesday*) about noon; and that then her Brother [*probably having read the 5th of Acts*] did again own that what he had declared about the *Razour*, *&c.* was true; that Mr *Braddon* wrote down what he acknowledged; and she further confessed, that she told the Boy, that his *Father* would be in danger of loseing his Place.

The matter pinching at this time, the *Chief Justice* to perplex the Cause, and divert from the Evidence, fell to hecto-

ring Mr *Wallop* (*Counſel for the Defendants*) a *Perſon* of great Integrity, and *Maſter* of more *Law*, than all the *Judges* then upon the *Bench*; telling him, in a moſt ſcurrilous manner, that he was zealous for Faction and Sedition [*as every Man was deemed to be at that Conjuncture, who was ſo hardy, as to ſtand up in any honeſt Cauſe, in that Court*] and impetuous in the worſt of Cauſes; and that his *Lordſhip* could ſee nothing in all this Cauſe but villany and baſeneſs, [*which in truth, to an high degree, was moſt evident in the carriage of the Court and Proſecutors of this Cauſe*] and that Mr *Wallop* ſhould not have liberty, to broach his *Seditious Tenets* there, [*Such, the aſſerting the native Rights of* Engliſh-men, *were in that day eſteemed, by the* Bene placito *Judges of that* Court.]

Mrs *Burt*, then produced by Mr *Braddon*, teſtified, That *She* was preſent when Mr *Braddon* came to ſpeak with the Boy; and that he ſaid to him, if it be true that you have ſpoken, own it; for 'tis a dreadful thing to be found in a *Lye*; and that Mr *Braddon* adviſed him to read the 5*th* of *Acts*; and that the Boy then ſaid, Sir, it is true, and what I ſaid

I will ſpeak, before any *Juſtice* of *Peace* in the World; and he then told Mr *Braddon* the whole Story.

*Jane Lodeman* (a Girl 13. years old) called by Mr *Braddon*, declared, that ſhe did not know young *Edwards*; and teſtified, that ſhe ſaw an hand throw a *bloody Razour* out of the *Earl* of *Eſſex*'s Window; and preſently after heard two *Shrieks*, or two *Groans*; and ſaw a *Woman* come out in a *White-Hood*; but did not ſee her take up the *Razour*; and ſhe added, that ſhe preſently told all this to her *Aunt*.

Here Mr *Solicitor* was pleaſed to ſport himſelf with the *Girl*, by way of *Dialogue*, thus.

*Solicitor*, Was the Razour bloody?

Girl, *Yes.*

*Solicitor*, Very bloody:

Girl, *Yes.*

*Solicitor*, Are you ſure 'twas a Razour or a Knife?

Girl, *I am ſure 'twas a Razour.*

*Solicitor*, Was it open, or ſhut?

Girl, *It was open.*

*Solicitor*, What colour was the handle?

Girl, *Sir, I cannot tell, I ſee it but as it flew out.*

*Solicitor*,

*Solicitor*, Was it all over bloody?

Girl, *No.*

*Soliciter*, All but a little speck?

Girl, *It was very bloody.*

Then *Jeffreys*, finding the *Girl* to be more than a Match for her first *Assailant*, falls in to his aid, and first bellows out a terrifying *Exclamation*, *Blessed God!* What an Age do We live in? [*That the* King's *Learned* Council, *with all their Cunning, cannot confound these innocent, honest, Infant* Witnesses] and then taking up the same Dialoguing Cudgel, falls roundly upon the *Girl*, thus.

*Chief Justice*, *Girl*, you say you did not know that 'twas the *Earl of Essex*'s Window.

Girl, *No, but as they told me.*

*Chief Justice*, Nor you did not see any body take up the Razour.

Girl, *No.*

*Chief Justice*, But are you sure you did not?

Girl, *I am sure I did not.*

*Chief Justice*, But, *Child*, recollect thy self, sure thou didst see some body take it up?

Girl, *No I did not.*

The *Goliah* thus miscarrying, Mr *Bradden*

*don* proceeded in his Evidence, and called the *Girl's Aunt*, Mrs *Smyth*, who witnessed, that the *Girl* coming from the *Tower*, upon the 13*th* of *July*, told her, that she saw a Razour thrown out of a Window, &c.; and that Mr *Braddon* hearing of it, came as a Stranger to enquire about it; and ever encouraged the *Girl* to speak the truth; and bad her speak nothing but what was truth; and that he never offered her or the *Girl* any thing.

Mr *William Glasbrooke* testified, That upon the 13*th* of *July*, he heard the *Girl* very loud with her *Aunt*, saying, the *Earl of Essex* has cut his Throat in the *Tower*; and that her *Aunt* chiding her, she said, she was sure it was true, for she saw a *bloody Razour* thrown out of the Window; and that he the said *Witness* was present, when Mr *Braddon* first discoursed the *Girl*; having never seen him before; and he heard her tell Mr *Braddon*, that the *Earl of Essex* cut his Throat, and that she saw a *bloody Razour* thrown out of the Window, and that she heard two *Groans*, or two *Shriekes*.

Then, Mr *Smyth*, being called by Mr *Braddon*, testified, that he went with

Mr

Mr *Braddon* to the *Girl*, and heard her tell him, that *she* saw an hand toss a *Razor* out at the *Earl of Essex*'s Lodgings; and that *she* heard two *Shrickes*; and saw a *Woman* come out, with *White head-Cloathes*; but did not see any one take up the *Razor*.

Mrs *Meux* was then produced by Mr *Braddon* to testifie, that *she* went from *London* to *Berk-shire*, the day before the *Lord Russell's Tryal*; and that a *Gentlewoman* in the *Coach* with her, then told her, that one of the *Lords* in the *Tower* had cut his *Throat*. At this the quondam *City Mouth*, storm'd and huff'd at his wonted rate, refusing to hear the Evidence, and demanding why they brought not the *Woman* which told this to Mrs *Meux*; and was answered, that *she* was so big with Child, that *she* could not come.

Mr *Burgesse* of *Marlborough* then testified, that he being at *Froome* (in *Dorset-shire*) upon the day of the *Earl* of *Essex*'s death; he heard there, a Report that his *Lordship* had murdered himself.

Then, the *King's Council* produced the *Coroner*'s well instructed *Witnesses*, to prove

prove that this Noble *Peer* was *Felo de se*; who were *Bomeny* (his *Lordship's Servant*, now in *France*, and a profeſſed *Papiſt*) *Hawley*, and *Ruſſell* the *Warder*, and *Lloyd* the *Centinel*.

Now, becauſe the *Depoſitions* of theſe *Fellows*, will appear in their moſt true and beſt light, in the *Abſtract* of ſome of the proofs, made about this moſt barbarous *Aſſaſſination*; which (*with the leave of the candid and ingenuous* Abſtracter *thereof*) I purpoſe to ſubjoyn, I ſhall not here enlarge upon them.

The Evidence on both ſides being given, in the laſt place comes *Jeffryes*, to deſcant and remark upon it, which he did in an harangue which makes ſix *leafs* in *Folio*; (*half as many, as the* Acts *of all the* Parliaments *in the Reign of* Charles the Martyr *do fill in our Statute Book*) He tells the Jury, *That there is ſcarce in nature a greater crime than this before them— It carries all the Venome and Baſeneſs, the greateſt Inveteracy againſt the* Government, *that ever any Caſe did———That the* Earl of Eſſex, *rather than he would abide his* Tryal, *he being conſcious, the great Guilt he had contracted, made him deſtroy himſelf, immediately after my* Lord Ruſſell

one

(one of the Conspirators) *was carried to* Tryal; *and it cannot be thought, but it was to prevent the methods of* Justice, *in his own Case; there was* digitus dei *in it, and 'tis enough to satisfie all the World of the* Conspiracy ——— *'Tis beyond all peradventure true, that my* Lord of Essex *did murder himself.*

Then, the Jury by their Verdict, brought in Mr *Braddon* Guilty of the whole matter charged upon him in the *Information*; and Mr *Speke* Guilty of all, but *conspiring* to procure false *Witnesses.*

The Court adjudged Mr *Braddon* to pay 2000*l. Fine*; to find *Sureties for good behaviour for Life*, and to be committed till performed. *Mr Speke*, to pay 1000*l. Fine*, *to find Sureties for good behaviour for Life*; and to be committed till performed.

An

## An Abstract of some material Proofs which have been made in Relation to the Death of the *Earl* of *Essex*.

### First for disproof of the *Earl's* Self-Murder.

THE *Right Honourable* Arthur *late* Earl of Essex *was Committed to the* Tower, *upon* Tuesday *the* 10th *of July*, 1683, *and there were two* Wardens *placed over him (viz.)* Monday *and* Russell, *and one Servant (viz.)* Paul Bomeney *was permitted to attend upon him; The very next* Friday *Morning about nine of the Clock, his Lordship was found dead in his Closet, with his Throat cut through both Jugular Arteries to the Neck-bone.*

*Now, seeing our Law presumes every Man destroyed by violent Hands, is murdered by others, unless such Evidence appears as gives satisfaction in the contrary, and proves him a Self-Murder; This Lord had been found to be barbarously murdered, had not* Bomeney, Monday *and* Russell *appeared to prove the*

(one of the Conspirators) was carried to Tryal; and it cannot be thought, but it was to prevent the methods of Justice, in his own Case; there was digitus dei in it, and 'tis enough to satisfie all the World of the Conspiracy——'Tis beyond all peradventure true, that my Lord of Essex did murder himself.

Then, the Jury by their Verdict, brought in Mr *Braddon* Guilty of the whole matter charged upon him in the *Information*; and Mr *Speke* Guilty of all, but *conspiring* to procure false *Witnesses*.

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*Now, ſeeing our Law preſumes every Man deſtroyed by violent Hands, is murdered by others, unleſs ſuch Evidence appears as gives ſatisfaction in the contrary, and proves him a Self-Murder; This Lord had been found to be barbarouſly murdered, had not* Bomeney, Monday *and* Ruſſell *appeared to prove*

*the*

*the contrary, and they endeavoured to prove it thus;*

*My Lord of* Essex *(they say) called for a Pen-Knife to pare his Nails, which Pen-knife not being ready, he required a Razour, which was accordingly delivered him, with which his Lordship having pared his Nails, he retired into his Closet, and locks himself in, and there he cut his Throat; and the Razour (before delivered to pare his Nails) lying by the Body.*

*But that this Relation is forged, and that there was,* First, *No Razour delivered to my Lord to pare his Nails, nor had his Lordship pared his Nails with any.*

Secondly, *Neither the Body locked into the Closet: Nor*

Thirdly, *The Razour lying locked in by the Body, when my Lord was first known to be dead, is evident from what follows, which clearly detects this Forgery. For the first of these, that there was no Razour delivered to my Lord.*

*This appears by the Contradictions of* Bomeney, Russel *and* Monday, *as to the time of the delivering this Razour, for* Bomeney *first swears, he delivered this Razour to my Lord to pare his Nails on* Friday *Morning at eight of the Clock; & within two*

*hours*

*hours, positively swears in the deposition himself writ, that he delivered it on* Thursday *morning at eight of the Clock (being the day before his death) and this as to the* Thursday, *he swears positively and circumstantially, positively; for he doth expresly name* Thursday, *as the day on which the Razour was delivered; and circumstantially, for he doth swear the Razour was delivered the very next morning after my Lord came to Captain* Hawley's; *and his Lordship went to* Hawley's, *on* Wednesday *the* 11th *of* July. *But,*

Russell *swears a point blank contradiction to* Bomeney's *Oath; for* Russell *deposeth, and now declares, that on* Friday *morning, in less then half an hour before they found my Lord dead in his Closet, he stood as Warder at my Lord's Chamber-Door,* (Monday *that morning having first stood as Warder on my Lord, and was then gone down to stand below Stairs) and heard my Lord ask* Bomeney *for a Pen-Knife to pare his Nails; which being not ready, his Lordship required a Razour; which he did immediately see* Bomeney *deliver his Lordship. But,*

Monday *doth as directly give the Lye to* Russell, *as* Russell *did to* Bomeney, *for* Monday, *the day my Lord died, declared,*

he saw my Lord have a Razour in his Hand, paring his Nails with it, at seven a Clock that morning my Lord died, and this about two hours before Russell came up, to stand as Warder at my Lord's Chamber-door.

Wherefore, unless it can be reconciled how this Razour should be delivered a Thursday Morning at eight of the Clock, according to Bomeneys Oath; and yet not delivered till Friday Morning at nine of the Clock, within half an hour of the time his Lordship was found dead, and delivered whilst Russell stood Warder at the Chamber-door; as Russell deposeth; And notwithstanding this, my Lord to have had the Razour, and pared his Nails with it two hours before Russell came up Stairs to stand Warder at my Lord's Chamber, as Monday declared the very day my Lord died. I say unless these Contradictions can be reconciled, it can't be thought that any Razour at all was delivered; And then whereas all declared my Lord pared his Nails with the Razour; by strict observation, it appeared my Lord's Nails were not newly, before his Death, either pared or scraped.

2dly, That the Closet-door was not locked upon my Lord's body, appears by the contradictions of these three, as to the opening the Close-door.

Bomeney

Bomeney *first swore, he did open the Door (when my Lord would not answer upon his knocking at the Door) and there saw my Lord lying dead in his Blood, and the Razour by him, and he then called the Warders; but immediately swears in contradiction to his first Oath, that he peeped through a chink of the Door, and saw Blood and part of the Razour, and then without opening the Door, ran and called* Russell, *who thereupon first opened the Door, and at Mr* Braddon's *Tryal, swears he knew not who opened the Door.*

Russell *deposeth he did first open the Door, and makes no difficulty in it; Then comes* Monday, *and gives the Lye to both: For,*

Monday *(the very day my Lord died) declared (what he hath since often confirmed) that neither* Bomeney *nor* Russell *could stir the Door, my Lord's Body lay so close and hard against it, and he being stronger then either, put his Shoulders against the Door, and pressing with all his might broke it open.*

*Whosoever there is that can reconcile these Contradictions (in these three mens Relations) and make all appear credible.*

——Erit mihi magnus Appollo.

*A further Argument, that the Closet-*

*Door was not locked upon the Body, appears by my Lord's Legs lying upon the Threeſhold of the Cloſet-door, when the Body was pretended not to have been ſtirred from its firſt poſture.*

3dly, *That there was no Razour lying locked in with the Body, when the Body was firſt found, appears by the bloody Razour's being thrown out of my Lord's Chamber-Window, (which is about ſeventeen Foot diſtant from the Cloſet-Door, where the Body lay) and no noiſe of my Lords death, till after the Maid carried up the Razour; which Maid thereupon firſt diſcovered my Lord's death.*

*And, as yet other Argument, of the Perjury of theſe perfidious Villains, add the Mathematical impoſſibility of the Wound, ſeeing not above two Inches of the Razour muſt be without my Lord's hand, (had he done it himſelf) and yet the Wound above three Inches deep. Moreover, by many eminent Doctors and Chyrurgions; the Wound is thought to be naturally impoſſible to have been done by my Lord himſelf, becauſe upon cutting the firſt Jugular Artery, ſuch an effuſion of Blood and Spirit would have immediately thereupon followed, that Nature would not have been ſtrong enough for to*

*cut*

*cut through the other Jugular Artery, to the Neck-Bone on the other ſide, muchleſs, to make ſo many, and ſo large Notches, in the Razour againſt the Neck-Bone, as an old fooliſh or K—Chyrurgion ſuggeſted to the Coroner's Jury.*

*Wherefore, by what is before obſerved, as to the many Contradictions, it plainly appears, that theſe three (as it is ſaid in the Hiſtory of* Suſanna, *verſ. 6.) are convicted of falſe Relations by their own mouths; and thoſe other Arguments before obſerved, are further Detections of theſe three mens Perjuries. It then remains as at firſt* (viz.) *That here is a Body found dead by violent Hands, and the manner of the Death not diſcovered (for it can't be according to theſe three mens Relations, for the Reaſons before obſerved) The concluſion that the Law makes in ſuch caſes; in this, therefore holds good,* (viz.) *that this honourable Lord was Murthered by the violent and cruel Hands of barbarous and bloody minded men.*

Secondly, *For the proof of the Murder; in this I ſhall firſt conſider, what is moſt material which paſſed before my Lords death.*

*Secondly, The Day of his Death. And then*

*Thirdly and Lastly, after the Day of his Death. In the*

First, *Before my Lords death, I shall consider,*

1st, *The previous Resolutions by* Papists *to cut my Lords Throat. And then,*

2dly, *The many previous Reports before my Lords death, That his Lordship had cut his own Throat in the Tower.*

*For the first of these,* D. S. *declares, that about nine days before the Death of the late* Earl of Essex, *she heard several* Papists *consulting together, concerning the said Earl; And this Informant heard them say, the Earl of* Essex *was to be taken off, and that they had been with his Highness, and his Highness was first for poysoning the Earl; but that manner of Death being objected against; it was then said, one did propose to his Highness; Stabbing the* Earl; *but this way his Highness did not like; at length his Highness concluded and ordered his Throat to be cut; and his Highness had promised to be there when it was done. Some few days after some of the aforesaid Persons declared, it was resolved the* Earl's *Throat should be cut, but they would give it out that he had done it himself, and if any should deny it, they would take them, and punish them for it.*

Secondly,

**Secondly, For the previous Reports before my Lords death.**

*Its proved, by eight ſeveral Witneſſes, that before my Lords death (or before it could be known) it was reported, that the* Earl of Eſſex *had cut his Throat in the Tower, amongſt the reſt, it was at* Frome, *which is about one Hundred Miles from* London, *the* Wedneſday *Morning; and at the ſame time at* Andover, *about ſixty Miles from* London, *though at neither of theſe places, eſpecially the former, could it then be known the Earl was a Priſoner in the Tower, his Lordſhip being not committed to the Tower, till the* Tueſday *in the Afternoon. All theſe Reports agreed in the manner how* (viz.) *cutting his Throat, and the place where* (viz.) *the Tower; and* (which is further) *at* Andover *the* Wedneſday *Morning before my Lords death, it was reported not only in the manner how, and place where, but likewiſe the pretended Reaſon wherefore, was given, for it was then, and there ſaid, that the* Earl of Eſſex *being a Priſoner in the Tower, and underſtanding that the* King *and* Duke *were come into the Tower, his Lordſhip was afraid the King would have come up into his Chamber, and ſeen him; of which his Lordſhips guilt and ſhame would not bear the Thought,*

*and therefore he did cut his Throat to avoid it. This being declared two days before my Lords death, when it could not have been in the least fore-thought, that the* King *and* Duke *would have come together into the Tower, where they had not been above twice together since the Restoration; I say, this previous Report, which so particularly cloathed this action, with the how, where, and wherefore; clearly proves, That all things were so resolved upon to be done; or otherwise it is impossible it should have been reported under these three essential Qualifications, as to manner, place, and reason, before it was indeed done; especially at* Andover, *where it could not then be supposed to be known that my Lord was so much as a Prisoner in the Tower; this Reason the* Papists *themselves gave out just after my Lords Death.*

Secondly, What passed the day my Lord Dyed.

*These then attending on my* Lord (*viz.*) Russell *and* Monday *the* Warders, Bomeney *the* Servant, *and* Lloyd *the* Centinel *at the door, did all deny that day my* Lord *died, that there were any Men let into my* Lords Lodgings *that morning before my* Lords *Death. But now it appears, that*

there

*there were ſome* Ruffians, *a little before my* Lords *death, ſent into his Lodgings to Murder him, which they did accordingly.*

R. Meake *A* Soldier *in the* Tower, *that morning my* Lord *of* Eſſex *was Murdered, about one of the Clock that very day, near* Algate, *told* B—*and his Wife, That the* Earl *of* Eſſex *did not cut his own Throat, but was barbarouſly Murdered by his Royal* Highneſſes *Order; For the ſaid* Meake *declared, That juſt before the* Earl of Eſſex's *Murder, his* Highneſs *ſent two Men to the* Earls *Lodgings to Murder him, which after they had done, they threw the* Razour *out of the Window. Likewiſe a* Soldier *that morning in the* Tower, *about a eleven a Clock that morning my* Lord *dyed, in* Baldwines-Gardens, *informed* G. *and* H. *that the* Earl *of* Eſſex *did not cut his own Throat, but was barbarouſly Murdered by his* Royal Highneſſes *own Order. For the Soldier then declared, that a little before the* Earl's *Murder, his* Royal Highneſs *parted a little way from his* Majeſty, *and then two Men were ſent into the* Earl's *Lodgings, to Murder my* Lord, *which when they had done, they did again return to his* Highneſs.

Mr E— *declares, That he ſaw his* Roy-

al

al Highneſs *juſt before the* Earl's *Death, part a little from his* Majeſty, *and then beckned to two* Gentlemen, *to come to him, who came accordingly, his* Highneſs *thereupon ſent them towards the* Earl of Eſſex's *Lodgings, and about a quarter of an hour after, this* Informant *ſaw theſe very two Men return to his* Highneſs, *and as they came, they ſmiled, and to the beſt of this* Informants *hearing and remembrance, ſaid,* the Buſineſs was done; *upon which his* Highneſs *ſeemed very well pleaſed, and then went to his* Majeſty, *to whom the News was immediately brought, that the* Earl of Eſſex *had cut his Throat.*

Lloyd *the* Centinel *at my* Lords *door, the day my* Lord *died (till the twenty firſt of* January *laſt) did deny the letting in of any men, (and* Ruſſell *and* Monday *ſtill deny it) but now* Lloyd *doth confeſs that juſt before my* Lords *Death, two or three men, by* Major Hawley's *ſpecial* Order, *were let in, and immediately he heard them, (as he did ſuppoſe they were) go up Stairs into my* Lord's *Room, where there was a very great buſtle and ſtir, ſo great, that the* Centinel *declared, he would have forced after them, had not the firſt door been made faſt; upon the buſſle he heard ſome-what*

*thrown*

*thrown down like the fall of a man, which he did ſuppoſe was my* Lords *Body; ſoon after which, it was cryed out, my* Lord of Eſſex *hath cut his own* Throat.

*Here is not only theſe mens going in, but a great buſtle confeſſed immediately thereupon, to enſue in my* Lords *Room, and the Body of a man in this buſtle to be thrown down; this is in a cloſe Priſoners Room, where no one is admitted, but his Servant, and thoſe that kept the door, denyed upon Oath, that any were in my* Lords *Chamber that morning my* Lord *dyed, before his Death. But theſe* Warders, *being ſuppoſed privy to the Fact, would not own the admitting of thoſe men, which themſelves let in with ſuch a Murtherous deſign; and it is to be preſumed that this* Centinel *was not a ſtranger to the matter, but enjoyned to ſecrecy; for otherwiſe he would never have declared to a Friend, under a repeated requeſt of ſecrecy, that this Confeſſion (as before) laid upon his Conſcience, and troubled him night and day, for tho' it was indeed very true, that he did let in theſe men, it was what he ſhould not have confeſſed. This Confirmation to his acquaintance (under a great and repeated injunction of ſecrecy) argues firſt, that this Confeſſion was indeed true.*

Secondly,

Secondly, *That there is some cursed Confederacy (its probable by Oath) entred into to stifle this Murther, for what other probable reason can be assigned for that trouble of Conscience in this Confession, seeing himself at the same time declared it was true, tho' he should not have said it? There are some other arguments that this* Centinel *was* particeps Criminis *in the Privity; first his retraction in part of what he did confess; for, upon his being first apprehended, he owned the throwing out of the* Razour, *before my* Lords *Death was known, but now he retracts and disowns it; Another instance of his privity, is his now prevaricating, in his now pretending, that these men were let in an hour, or more before my* Lords *Death; whereas at first he declared they were let in before my* Lords *Death; for, as soon as let in, he heard several go up Stairs into my* Lords *Room, and heard the bustle, &c. as before.*

*A third argument of this* Centinels *privity, is his not declaring the whole truth, which he must know; for one at a greater distance that saw these* Ruffians, *as they were bustling with the my* Lord, *and heard the bustle, did likewise hear one of these in the bustle (as it seemed to be, (and therefore presumed to be my* Lord, *cry out very loud, and very dole-*

*fully*

fully, Murther, Murther, Murther; *The* Centinel *who could hear the trampling, or indeed the very walking in my* Lords *Chamber, could not but hear this* Murther, *ſo loud and often repeated: It appears by five Cuts in my* Lords *right hand,* (viz.) *two upon his fore-finger, one upon the fourth-finger, another on the little-finger, and the fifth about two Inches long in the palm of his right hand, that his* Lordſhip *in this buſtle made great reſiſtance; for theſe Cuts can be ſuppoſed to be done no otherwiſe, then by endeavouring to put off the cruel Inſtrument of his Death.*

The next thing that I ſhould obſerve, which happened the day my *Lord* dyed, and gives us reaſon to believe the Murther, is the Irregularity committed upon the Body before the *Jury* ſaw it, the Body was ſtrip'd and waſhed, and the Room and Cloſet waſhed, and my *Lords* Cloathes carried away (tho' all Men know the Body ſhould have remained in its firſt poſture, till the *Coroners Jury* had ſeen it.)

Sr T. R. *as himſelf ſaith, declared to the* Lords, *that the Body was not ſtirred from its firſt poſture, till the next morning*

about

about ten of the Clock. To this Sr Tho. has not sworn (for he was not sworn before the Lords) and 'tis well he has not, for herein he is so much mistaken, that the contrary can be proved by almost twenty Witnesses, had the Body remained in its first posture, by my Lords Cravat being cut in three parts, the Jury would have plainly seen, that his Lordship could not so do it, with a Razour; And then, Secondly, they would have perceived the print of a bloody Foot upon my Lord as he lay in the Closet, by which it appeared some one had been with the Body in the Closet, and several other material circumstances might have been discovered, which by the total (illegal) alteration of the Circumstances of the Body &c. were destroyed.

About three of the Clock in the afternoon that day my Lord dyed, some of those bloody men (who had been at the Consult) met at Holme's House; and one of them leapt about the Room as overjoyed, and as the Master of the House came into the Room, he strikes him upon the back, and cryed, The Feate was done, or We have done the Feate; upon which the Master said, Is the Earls Throat cut? To which the other replyed, Yes; And further said,

He

He could not but Laugh to think, how like a Fool the *Earl of Essex* looked, when they came to cut his Throat.

*To destroy the Testimony of this* Dorothy Smyth, Holms *hath produced two Witnesses who (by many Witnesses) appear to be for-sworn in every part of their Depositions. His defence being false, his Charge therefore may be concluded true.*

Thirdly and lastly, What passed after the day of my *Lords* Death.

*That very morning, several* Soldiers *(which were presumed able to discover what was material, with relation to his Death) were called together (As* Meakes *then said) and enjoyned to secrecy, under very severe Penalties.*

*About ten of the Clock in the morning, the next day, the* Jury *met, and were surprized to see all the Circumstances of my Lords body changed from what was first discovered.*

*After the Jury had seen the naked Body at* Hawley's, *the* Coroner *adjourned them to a Victualling-House in the Tower; one of the Jury demanded a sight of the Cloaths, but the* Coroner *was immediately called into the next Room, from which returning to the* Jury *in some Heat, he told them, It was the*

Body

*Body, and not the Cloathes they were to ſit upon, the Body was there, and that was ſufficient.*

*One of the Jury then ſaid,* My Lord of *Eſſex* was eſteemed a very ſober, ſedate, and good Man *(which* Bomeney *then confirmed, ſaying, His Lord was a very pious Man)* and therefore it was improbable ſo good a man ſhould be guilty of the worſt of Actions. *Upon which* Hawley *told the Jury, They were miſ-informed in my Lords Character, for every man that was well acquainted with my Lord, well knew that it had ever been a fixed Principle in him, that any man might cut his Throat, or any otherwiſe diſpoſe of his Life, to avoid a diſhonourable and infamous Death; wherefore this Action, which they thought unlike him, was according to his avowed and fixed Principles. This made the* Jury *the more eaſily believe that my Lord had indeed done it.*

*Some of the* Jury *were for adjourning their Inquiſition to ſome further day, and in the mean time to ſend notice to the* Earls *Relations, ſo that if any thing appeared on my* Lords *behalf, it might be produced.* Hawley *hereupon aſſured the* Jury, *that they could not adjourn their enquiry, for his Majeſty had ſent one for their Inquiſition, and would*

*not*

not rise from the Coun. till it was brought him; This the Jury believing, immediately made all haste possible, whereas otherwise they might have been more strict, and particular in their Examinations; Hawley in answer to this totally denyes all, and protests that he was not nigh the Jury in the Victualing-House all the time the Jury sat, tho' most of the Jury can say the contrary. And as for the suggesting Self-Murder to be my Lords Principle, he did protest he did never hear it said, till their Lordships in this Committee told him it had been so declared. This clearly proves that the pretended Principle of Self-Murder, was a forgery of that bloody Party which Murthered my Lord, And Hawley pitched upon as the most proper person to corrupt the Jury with the belief of it.

The backwardness of the then Government to examine this matter, and their unjust proceedings against the Prosecution (for they discouraged and ruined him who did humbly offer the matter to a judicial consideration, tho' no crime or colour of offence was proved against him) is further evidence of this Murther.

The Government turned old Edward's out of his Place for what his Son said in this matter, and hereby inverted the old Proverb,

verb, For here the Sons eating four Grapes, had set the Fathers teeth an edge.

*A poor Soldier was barbarously Whipt (after he had been cruelly managed in Prison) for only saying, That he would not say, that he believed the* Earl of Essex *cut his own Throat. But a more barbarous Cruelty is justly suspected to have been committed in the after Murther of several* (viz.) of Meake *and* Hawley, *&c. to prevent a detection of this Murther.*

*Tho the* Government *heretofore had received private Intimations, and in Print publick Applications for a Pardon, and thereupon a promise of a full Discovery, and in both these the* Duke of York *particularly charged as the chief Contriver of this horrid Cruelty, yet the then* Government *would never permit such an Inquisition to be made, but punished those that dispersed those publick Challenges; Had his* Highness *been really Innocent, none would have been more zealous for such a* Proclamation *of Pardon, for Innocence desires a Tryal, and its only Guilt that flies from Justice. Another Argument of this* Murther, *and likewise of* Major Webster's *Guilt therein, is* Webster's *producing my* Lords *Pocket-handker-*

*chief*

chief all bloody to some of his Neighbours, rejoycing at the blood of a Traytor, and the very next day to some of the same Persons he produced part of the price of Blood, viz. a Purse of Gold, wherein there were Forty nine Guineas, and a Pistol which he shewed in great Ostentation, but all this was but a small part of that villanous Reward, for sometime after my Lords Death, when his Wife was upbraided with her Husbands Poverty, she replyed, her Husband long since was not so Poor, for he had Five hundred Guineas, at which the other being startled, answered, most certainly he could not come by them honestly, to which it was said, that he got them by his Trade, but to that it was replyed, that his Trade could hardly get Bread, therefore there must be some other way.

Its very probable that Websters Wife speaking of his Trade, might intend Murther, in which it is supposed he has been more then once concerned, tho' the other mis-understood her.

That she was not a stranger to his Guilt appears, by her often telling him (upon her hard Usage) that he was a Fool, as well as a Rogue to use her so ill, he knowing it to be in her power to Hang both him and ano-

*ther in the* Tower; *A like Inſtance there happened upon a Quarrel between* Holmes *and his VVife, ſoon after my Lords Death, ſhe thereupon told him, he was a Murthering Rogue, and he well knew, that ſhe could at any time hang him for it, to which* Holmes *anſwered (with his uſual ſcurrilous Language, you Bitch, you Whore, you of all the World have no reaſon to ſpeak, for do not you remember I bought you a good Satin Gown and Petticoat, whereupon the wife replyed, you are a Murthering Rogue for all that.*

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# REMARKS Upon the Proceedings in the Caſe of *Edward Fitz-Harris* Eſq: in the Court of *Kings-Bench*, in the Year 1681.

IT may not be forgotten, that the *Poliſh Plot* in 1678, was to have been uſhered into the World, by a *Preſbyterian*, or *Fanatick Conſpiracy*; to that end, in *July* 1678, when the *Papiſts* had reſolved to diſpatch *King Charles*, to make

make way for *King James* the Second; Mr *Claypoole* (becauſe *Son-in-Law to* Cromwell) was clap'd into the *Tower*, (upon the Accuſation of *Sing* a *Papiſt*) upon a pretence, that he was to ſeize the *King* in his way to * *Newmarket*; And it doth as well deſerve Remembrance, that the *Conſpirators*, having been diſappointed and vexed, with the unlucky diſcovery of their *Plot*; Reſolved, to make one *Fanatick Plot*, or other, to thruſt theirs off the Stage; and to turn the *Popiſh* into a *Proteſtant Plot*; Thereupon, the danger of Forty-one, and of *Fanaticiſm*, was moſt induſtriouſly diſcourſed and preached; And, which was more, a great *Prelate*

* That *Newmarket*, or the way to it, was the place deſigned for diſpatching the *King*, long before *Keeling* made it ſo, in the year 1683; is very evident, for by the *Journal* of the Houſe of *Lords* (upon the 12th of *November* 1678) it appears, that *Conyers* (*Confeſſor to the Lord Ballaſis*) had at this very time, in 1678. undertaken to kill the *King*, in his morning Walks, at *Newmarket*: Were the *Newmarket Fire* throughly (even at this day) examined, it might be found, that that Town was as certainly burnt by the *Papiſts*, to countenance *Keeling*'s *Plot*, which immediately ſucceeded; as tis certain that they Burnt *London*; and that the great *Earl* of *Eſſex*'s Throat was cut, in order to the Murther of the good *Lord Ruſſell*.

declared, that tho' it was true, That there was a *Popish Plot*, *there was also a greater design carrying on by the Forty one Party.*

Matters being thus prepared (cost what it will) we must have another *Plot*, that the belief of that of the *Papists* may be blasted, and the management thereof is now committed to *Madam Wall*, *Chamber-Maid to the Dutchess of Portsmouth*, always a Creature of the D. of *York's*, and now the same *Lady Ogolthorp* who was lately seized at *Chester* going for *Ireland*) this Woman of Intrigue introduces and recommends to *K. C.* the second, *Mr Edward Fitz-Harris*, an *Irish Papist*; and he was directed to make a Counter-Plot, in which we find *Rome* and *Hell* united with our Conspirators, for the destruction of *Protestants*; and *Fitz. H.* is encouraged to it with great Rewards and greater Promises.

In order to the framing and fitting this new intended *Plot*, against the meeting of the *Parliament at Oxford*, upon the 21st of *March* 1680. *Fitz. Harris* renews an old acquaintance which he had with *Mr Everard*, who pretended himself a *Confident of the Earl*

of

*of Shaftesbury's*, and entertained his old Friend *Fitz-H.* with complaints of that *Noble Lord*, and his *Party*; hereby was *Fitz-H.* encouraged to tamper with *Everard*, to joyn with him in framing a most *Trayterous Libel* against the *Government*: There were great as well as little *Villains* in this design; and *Fitz. H.* was daily instructed at *White-hall*, and directed to adapt their *Libel* to the humour, and make it speak the Language of the highest *Male-Contents*; that thereby their Plot might gain belief, and appear plausible to the World; accordingly they set about it, *Fitz. H.* furnishing Materials, and *Everard* drawing it into form; The *Conspirators* were Cocksure of catching the *Earl* of *Shaftesbury*, and the discontented party (as they termed all the avowed Enemies of *Popery*, and true Friends to the *English Liberties*) in this snare; it being resolved to disperse this hellish Paper amongst them, and then to seize it upon them.

After several meetings about this Intrigue, between *Everard* and *Fitz-Harris* they appointed to compleat their work at *Everard's* Lodgings, about the last of *February* 1680, against that time,

*Everard* planted, *Sr William Waller*, and *Smyth* (known by the Name of *Narrative Smyth*) within hearing; They then perfecting their *Libel*, and each of them taking a Copy of it, *Fitz-Harris* runs with great joy with it, to *Nell Wall*, to *White-hall*, but the *King* being unluckily at *Windsor*, he fatally missed the opportunity of being before-hand with *Everard*; and was seized in his Bed by *Sr William Waller*, and carried to *Secretary Jenkins*; and being the next day brought before the *Council*, the Witnesses were examined, and he was committed to *Newgate* for *high Treason*; Notwithstanding a *great Man* said, that *Fitz-Harris* was his Friend, and that *Waller* was a *Rogue*, *and had spoiled all.*

*Fitz-Harris* being fast, and reflecting, no doubt, upon *Colman*'s fate, began to relent, and offers to make full discovery of the *Villany*, and of those who employed him in it: Thereupon, Sr *Robert Clayton* and *Sr George Treby* (as *Justices of London*) took his Examination; This gave great offence at *White-hall*; insomuch, *that he who had the Power of Life and* Death, *positively declared that he should dye*; and to prevent his further discovery,

diſcovery, which he had promiſed to make, he is inſtantly removed, and kept moſt cloſely in the *Tower*, where he was moſt rigorouſly handled, to make him retract his *Confeſſion*.

The *Conſpirators*, being thus defeated of this hopeful *Fanatick Plot*, calculated for the entertainment of the *Oxford Parliament*; and well knowing that *Fitz-H.* and his *Wife* could make it out, who ſet them to work; *and that he was paid* 250*l.* *at* White-hall *for this Service*; They came to a reſolution, that the *Parliament* muſt not pry into this miſtery of *Iniquity*: however,

The *Parliament* being met, the *Houſe* of *Commons* fell upon it, and on *Friday* the 25th of *March*, 1681. Upon the reading *Sr Robert Clayton*'s and *Sr George Treby*'s Examination of *Fitz-Harris*, *Sr John Hotham* moved, that it might be printed, to ſhew the World the deviliſh *Conſpiracies* of the *Papiſts*; which motion was ſeconded by *Sr William Jones*, who ſaid, that People had been prevailed upon to believe, the *Plot* not true, and *that that Examination confirmed the Informations of Otes* and *Bedloe*. *Sr Francis Winnington* added, that the

Trea-

Treasonable Paper of *Fitz-Harris*, was to have been sent to many *Gentlemen*, and they to have been seized thereupon, as Traytors in a Conspiracy against the King; That all was at stake, therefore let not our Courage leisen; Let us go to the bottom of this business of *Fitz-Harris*; I move, he may be impeached of *High-Treason*; and it may be he will relent and tell you all.

*Sr Robert Clayton* then said, That, when *F. Harris* his Examination was taken at *Newgate*, he told him, that he thought he had not dealt ingenuously, unless he would tell what Council he had for drawing the Paper; and that he bad him be ingenuous in the whole matter, and he would come and take his further Examination; and that *F. Harris* having promised this; he was removed out of their reach into the *Tower*.

Whereupon, an *Impeachment* was ordered, & Sr *L. Jenkins* commanded to carry it to the *Lords*; and *Col. Birch* said, That we ought all to give *God* thanks for this discovery of *Fitz-Harris* next to the first discovery of the Plot.

Upon *Saturday* the 26th of *March*, 1681, the House of *Commons* being informed, that the House of *Lords* had refused

fuſed to proceed upon the *Impeachment*.

*Sr Thomas Lee* ſaid, That he ſaw, by the *Lords* refuſing the *Impeachment*, no further uſe of *Parliaments*, *That they would be a Court, or not a Court, to ſerve a preſent purpoſe.*

Then *Sr William Jones* ſpoke to this effect; Indictments were brought againſt the *Lords* in the *Tower*, and yet that was no impediment to their *Impeachment* in the *Lords Hauſe*; but, here is no Indictment, or Proſecution brought againſt *Fitz-Harris*. We have an inſtance freſh in memory, *Scroggs a Commoner*, and not indicted at Common-Law, yet the *Lords* without ſcruple accepted his *Impeachment*; We find the *Lords* have determined a great point, *The Lords Spiritual*, as well as Temporal, *have voted the refuſal of the Impeachment of* Fitz-Harris; which we own not in this Judicature, nor I hope never ſhall; and, *We are denyed Juſtice by the* Lords Spiritual, *who have no right to Vote*; This is a double act of Injuſtice; Let us then Vote, *That the Commons have a Right to impeach in capital Caſes*; *and that the Lords have denyed us Juſtice in refuſing the Impeachment*, in a *Parliamentary* way; At a Conferrence

ference, shew how unwarrantable the *Lords* Actions have been, and if the dissolution of the *Parl.* follows, *its the fault of those Men who will not hear our Reasons.*

*Sr Francis Winnington* backt this Motion, and said; This *Impeachment* is not an ordinary Accusation, but it *relates to our* Religion, and Property *and how the* Bishops *come to stifle this, let* God *and the World judge.*——If the *Lords* will vote, that the *Commons* shall not impeach him; They may as well vote, they shall not be *Prosecutors.* This is a *new Plot* against the *Protestants*, of which *F. Harris* is accused; and *We must not Impeach him*; In this, the *Lords* say, we must not hear it;——I desire you would come to some *Vote*, you are willing to discover the *Plot*, if you could;——If our time be short (as I believe it is) pray come to some Resolution to assert your Right;——A little while ago, when the *Duke* was presented for *a Papist*, the *Grand-Jury* was dismissed by the *Chief Justice*; This seems, as if the *Lords* would justifie the *Judges Proceedings*, by their own;——If no Man doubts our Right, pray vote it.

*Sr Robert Howard* then spoke to this effect, This of *Fitz-Harris* seems to me,

to

to be a more dangerous breath then usual, a breath fit to be stifled; *There is something in this more then ordinary.* If there be so sacred a respect to common Tryals, in *Inferiour Courts*; 'tis strange, that the *House of Commons* should be below a *Common-Jury*;——It seems the *Lords* value *Fitz-Harris* to keep him from us, ——If *Dangerfeild* would speak what he knew, nothing of Mercy was too big for him; but they hurry *Fitz-Harris* away to the *Tower*, when he began to confess in *Newgate*; *Are you so lost, that you have no Mercy left for the* Protestant Religion——We hear that the *French Ambassador* had a hand in this *Plot*, which a Jury will not enquire into. I must confess, that by the carriage of this, I have enlarged my suspition, for I cannot but suspect unusual ways——Something depends upon this Man——SureWe must not lay down all Prosecution of the *Plot*, and say, that the *Protestant Religion* shall have no Mercy. *Fitz-Harris* may merit Mercy by Confession, and if his breath be stoped by the *Lords*, I am sorry that People will say, If it were not for the *Lds. P.H.* might have discovered all the *Conspiracy*, and the *Protestant Religion* might have been saved.

Mr

Mr *Serjeant Maynard* then added, We all know what Arts and Crafts have been used, to hide the *Plot*; it began with *Murder*, *Perjury* and *Subornation*; This of *Fitz-Harris* is a second part of it; The *Lords* deny to receive our *Impeachment*; In effect, they make this no *Parliament*; if We are the *Prosecutors*, and they will not hear our *Accusation*; 'Tis strange, when their own lives, as well as ours, are concerned in the *Plot*— When all is at stake; We must not prosecute; If this be so, *Holland* and *Flanders* must submit to the *French*; and they run over all: This is a strange breach of *Privilege*, and tends to the danger of the *Kings Person*, and destruction of the *Protestant Religion*.

Sr *Thomas Player* then said, This of *Fitz-Harris* is a considerable confirmation of the former *Plot*; I call it the *Old Plot*, *but its still new upon us*; when he inclined to discover what he knew, he was fetched to *White-Hall*, and sent to the *Tower*; and so We were deprived of all further hopes of discovery; and now they stop his Mouth; I move therefore, That you will declare, *That if any Judge, Justice, or Jury, proceed upon*

*on him, and he found guilty; that you will declare them guilty of his Murder, and Betrayers of the Rights of the* Commons *of* England; Hereupon the *House* came to these *Resolves.*

*That it is the undoubted right of the* Commons *in* Parliament *assembled; to impeach, before the* Lords *in* Parliament, *any* Peer, *or* Commoner *for* Treason, *or any other Crime or Misdemeanour; and that the Refusal of the* Lords *to proceed in* Parliament *upon such* Impeachment, *is a denyal of* Justice, *and a violation of the Constitution of* Parliaments.

*That in the Case of* E. Fitz-Harris, *who by the Commons, has been impeached for* High Treason, *before the* Lords, *with a Declaration, That in convenient time, they would bring up the Articles against him; For the* Lords, *to resolve, that the said* Fitz-Harris *should be proceeded with, according to the course of the* Common Law; *and not by way of Impeachment in* Parliament; *is a denyal of* Justice; *and a Violation of the Constitution of* Parliaments; *and an Obstruction to the further discovery of the* Popish Plot; *and of great danger to his* Majesties *Person, and the* Protestant Religion.

That

*That for any* Inferiour Court *to proceed against him, or any other Person, lying under an* Impeachment *in* Parliament, *for the same Crimes, for which he or they stand impeached, is an high breach of the* Priviledge of Parliament.

This matter, thus agitated in the House of *Commons*, was countenanced by a *Protestation* of many *Temporal Lords*, which was to this effect,

*That in all Ages, it had been an undoubted Right of the* Commons, *to impeach before the* Lords *any Subject for* Treasons, *or any other Crime whatsoever.*

*That they could not reject such* Impeachments, *because that* Suit *or* Complaint, *can be determined no where else; for an* Impeachment *is at the Suit of the* People; *but an* Indictment *is at the Suit of the* King;

† Which was always to be preferred, and upon notice thereof, all Prosecutions at the Kings Suit were to stop, till the Prosecution at the Suit of the Party was determined.

*As, the* King *may Indict at his Suit, for Murther, and the Heir, or the Wife of the Party Murthered may bring an* † Appeal; *And the* King *cannot Release that* Appeal; *nor his* Indictment *prevent the Proceedings in it.*

*It is an absolute* denial of Justice, *in*

*regard*

regard it cannot be tryed any where else; The House of Peers, as to Impeachments, proceed by vertue of their Judicial Power; and not by their Legislative; and as to that, act as a Court of Record; and can deny Suitors (especially the Commons of England, that bring legal Complaint before them) no more than the Judges of Westminster, can deny any Suite, regularly commenced before them.

Our Law saith, in the Person of the King, Nulli negabimus Justitiam, We will deny Justice to no single Person; yet here, Justice is denyed to the whole Body of the People, This may be interpreted an exercise of Arbitrary Power, and have an influence upon the Constitution of the English Government; and be an encouragement to all Inferiour Courts, to exercise the same Arbitrary Power, by denying the Presentments of Grand-Juries, &c. for which, at this time, the Chief Justice stands impeached in the House of Peers.

These Proceedings may mis-represent the House of Peers, to the King and People, especially at this time; and the more, in the particular Case of Edward Fitz-Harris, who is publickly known to be concerned in vile and horrid Treasons against his Majesty;

*and a great* Conspirator *in the* Popish plot, *to Murther the* King, *and destroy and subvert the* Protestant Religion.

| | |
|---|---|
| *Monmouth*, | *Macclesfield*, |
| *Kent*, | *Mordant*, |
| *Huntington*, | *Wharton*, |
| *Bedford*, | *Paget*, |
| *Salisbury*, | *Grey* of Werke, |
| *Clare*, | *Herbert* of Cherbury, |
| *Stamford*, | *Cornwallis*, |
| *Sunderland*, | *Lovelace*, |
| *Essex*, | *Crew*. |
| *Shaftesbury*, | |

This *Protest* was no sooner made upon *Munday* the 28*th* of *March* 1681, but the *Parliament* was instantly dissolved.

Well, The *Parliament* being dismissed, *Fitz-Harris* must be Hang'd out of the way, and the Term approaching, *Scroggs* the *Chief Justice*, who lay under an Impeachment for *Treason* in *Parliament*, is removed with marks of Favour and Respect; being allowed a *Pension for Life*, and his *Son Knighted and made one of his* Majesty's *Learned* Council; and Sr *Francis Pemberton* being advanced to the Seat of *Lord Chief Justice*, the

Business

Business of *Fitz-Harris* is brought before him, and Justice *Jones*, Justice *Dolben*, and Justice *Raymond*; and proceeded upon in the manner following.

UPon the 27th of *April* 1681, an *Indictment* for *high Treason*, was offered to the *Grand-Jury*, for the *Hundreds* of *Edmonton* and *Gore* in *Middlesex*, against *Fitz-Harris*, whereupon,

Mr *Michael Godfrey*, the *Foreman*, in the name of the *Grand-Jury*, desired the opinion of the *Court*, whether it were lawful and safe for them, to proceed upon it; in regard *Fitz-Harris* was *Impeached* in the late *Parliament* at *Oxford*, by the *House of Commons*, in the name of all the *Commons* of *England*.

Mr *Attorney General* then said, That Mr *Godfrey* and two more, were against accepting the *Bill*; but the body of the *Jury* carryed it, to hear the Evidence; and that thereupon, himself and Mr *Solicitor* went on upon the *Evidence, and spent some time in opening it to the *Jury*; and *We* thought they would have found the *Bill*; but it

* A new way of dealing with *Grand-Juries* to procure the finding *Bills* of *Indictment*.

 seems,

ſeems, They have prevailed to put theſe ſcruples in the others heads; Then

The *Lord Chief Juſtice Pemberton* ſaid, your ſcruple is this; here was an *Impeachment* offered againſt *Fitz-Harris* to the *Lords*, which was not received, and thereupon there was a Vote of the *Houſe of Commons*, that he ſhould not be Tryed by any other *Inferiour Court*; We do tell you, 'tis our Opinion, that, If an *Indictment* be exhibited to you, you are bound to enquire, by vertue of your Oathes; you cannot, nor ought to take notice of any ſuch *Impeachment*, nor *Votes*; and We ought to proceed according to Juſtice, in Caſes that are brought before us: This *We declare as the* Opinion *of all the* Judges of England.

Then the *Jury* went away, and afterwards found the *Bill*.

Upon *Saturday* the 30*th* of *April*, Mr *Fitz-Harris* was brought to the *King's Bench-Bar*, and Arraigned upon the *Indictment*; whereupon, he offered a *Plea* in writing, to the *Juriſdiction of the Court*; and the *Chief Juſtice* ſaid, We do not receive ſuch Pleading as this, without a *Counſels* hand to it.

Upon which, the *Priſoner* deſired the Court,

Court, to assign Sr *Francis Winnington*, Mr *Williams*, Mr *Pollexfen*, and Mr *Wallop*, for his Council; which was accordingly done.

Upon *Monday* the 2*d* of *May*, the four Council moved the *Court* to have longer time for drawing the *Plea*; and that they might have a sight of the *Indictment* as necessary to the drawing it; but they were opposed therein by Mr *Attorney*, and the *Court* denyed both; Then Sr *George Treby*, and Mr *Smith*, were also assigned as *Council* for the *Prisoner*, at his request.

Upon *Wednesday* the 4*th* of *May*, *Fitz-Harris* being brought from the *Tower*, to the *King's Bench-Bar*; Mr *Wallop* said, That they had not had those Instructions that were fit to direct them in drawing the *Prisoner's Plea*; not having prevailed for a sight of the Impeachment or Indictment; and that he conceived, that by the Law, as that Case was, upon a special Plea; The *Prisoner* ought to have a Copy of the *Indictment*.

Then the *Plea* was read in these Words, *viz.*

*Et predictus Edwardus Fitzharris in propria persona sua ven. & dic. quod ipse ad Indictament. predict. respondere compelli*

*non debet, quia dic. quod ante Indictament. pred. per Jur. pred. in forma pred. compert. scil. ad Parl. Dom. Reg. nunc inchoat. & tent. apud Oxon. in Com. Oxon. vicesimo primo die Martii anno Regni dict. Dom. Reg. nunc tricesimo tertio, ipse idem Edw. Fitzharris per Milites Cives & Burgenses in eodem Parl. assemblat. nomine ipsor. & omnium Com. Angliæ, secundum legem & cons. Parl. de alta proditione coram Magnat. & Procerib. hujus Regni Angl. in eodem Parl. assemblat. impetit fuit; quæ quidem impetitio in plenis suis robore & effect. adhuc remanet & existit, prout per Record. inde inter Recorda Parliamenti remanens plenius liquet & apparet. Et pred. Edw. Fitzharris ulterius dic. quod alta Proditio in Indictamento pred. per Jur. pred. in forma pred. compert. specificat. & mentionat. & alta Proditio unde ipse predict. Edw. Fitzharris in Parl. pred. modo ut prefert. impetit fuit & existit, sunt una & eadem alta Proditio, & non alia neque diversa; & quod ipse pred. Edw. Fitzharris in Indictamento pred. nominat. & pred. Edw. Fitzharris in Impetitione pred. nominat. est una & eadem persona, & non alia neque diversa: & hoc parat. est verificare, &c. Unde ipse pred. Edw. Fitzharris petit Judicium si Cur. Dom. Reg. hic super Indictamentum pred. versus ipsum ulterius procedere velit. &c.*

The

The *Attorney General* then prayed *Judgment* upon the *Plea*; saying, 'Tis an *insufficient Plea*; nay, 'tis no Plea to to bar you of your *Jurisdiction*; Whosoever will plead to the *Jurisdiction*, if he have any *Record* to plead, must produce it in *Court*; and for this matter, it will appear a plain *frivolous Plea*; for there is no such matter depending as this *Plea* alledges; Another thing is this, They have pleaded no *Record* at all, nor any Impeachment at all; For they say he was impeached by the *Commons de alta Proditione*; but that is nought; The *Plea* ought to set forth, for what Crime particularly; this is no *Plea* to the *Jurisdiction*, upon that point. ——*Upon an Impeachment, or Indictment, the King hath his Election to proceed upon which he will*—— This is not only apparently, *a false Plea, but frivolous in it self*, being to the Jurisdiction; For, *there was never any thing of a Crime so great, but the* Court of King's-Bench (*which hath a* Soveraign Jurisdiction, *for Commoners especially*) *could take Cognizance of it.*

The *Chief Justice* then said, Pray consider, whether if it be an *insufficient Plea*, and such that no Issue can be taken upon

it, whether you would not demur to it; Consider whether you think fit to *demur*, or to take *Issue* upon it, or reply to it; that it may come *judicially* for our *Opinion*.

The *King's Council*; *Mr Solicitor*, *Serjeant Jeffryes*, *Sr Francis Wythens*, and *Mr Saunders* spoke much to the effect with Mr *Attorney*, and prelled to have the *Plea rejected*; but after much contrafting about the matter, the *Attorney* agreed to *demur* generally; and the *Prisoner's Council* immediately joyned in *Demurrer*.

Then Mr *Attorney* moved thus; I desire your Judgment, that the *Plea* may stand *over ruled*, *for a plain fatal Error in it*; This is a particular *Indictment* for the framing a most pernicious scandalous *Libel* against the *King*; They, to out the *Court* of this *Jurisdiction*, plead, that he was *Impeached of high Treason* in general; Now, *Pleas to the Jurisdiction*, ought to be the most certain of any *Pleas* whatsoever.

Mr *Solicitor* added, *This Plea is neither good in matter nor forme*; he that pleads an *Indictment* or *Impeachment* in another *Court*, must set it forth in the *Plea*; which is not done in this Case, and We take

take that to be fatal to it.

Mr *Williams* (for the *Prisoner*) then said, We hope the *Court* in this Case will not tye us up presently to argue this matter; Mr *Attorney* sayes, he never found that any *Plea* to the *Jurisdiction* required a *Demurer*, but was over-ruled, or allowed by the *Court* presently; The *Precedent* in *Elliot's* Case, is full in it; He was *Indicted* for Misdemeanors in the *House of Commons*; he Pleaded this to the *Jurisdiction* of the *Court*, the *Attorney* at that time, insisted to have it rejected but the *Court* over ruled him, and put him to *demur*; *This is a Precedent* Mr Attorney *hath not seen*: The *Court*, in that Case, did not tye them up to argue the *Plea* presently, but gave them till the next *Term*. *Here is a Mans Life in question, and the Priviledge of* Parliament *concerned in it*; *We desire a reasonable time*; in the Case of *Plunket*, you gave him till next *Term*; which is as high a *Treason* as this, I am sure of it.

*Sr Francis Winnington*, spoke to the same purpose, and said, *This is a Case well worth our taking care of, and yours too*; We hope you will not deny us what time is reasonable.

Mr

*Mr Wallop* added, That he had been an unprofitable *Attendant* in that *Court* near forty Years, and *never saw so swift a proceeding as this, which is as swift as lightning*; That, whereas they called it a *frivolous Plea*; he believed the *Plea* to be of the greatest import, that ever those *Gentlemen* came there about; That, *de Morte Hominis, nulla est Cunctatio longa*; That he humbly prayed a reasonable time to be allotted.

Then, the *Lord Chief Justice* proposed to the *Prisoner's Counsel*, that he should *plead over*. *Mr Pollexfen* answered, We cannot do it, we have considered it, and are of Opinion, that if we should plead over, it would destroy our Plea; by doing it, we give up the Jurisdiction. It is as indifferent to me, as any Body, to be forced to argue it now; but, No Body can say, they ever saw many Instances of the like nature; Therefore, pray *my Lord*, let us not go on so hastily with it; If you will not give us leave and time to be prepared to argue it, you must take it as we are able, since we can't have time to make our selves able.

The *Attorney*, *Solicitor General* and *Sr George Jeffryes*, vehemently opposed the

the allowing any time, to argue the matter, and preſſed for preſent Judgment; but after much tugging about it, the *Court* allowed time till the *Saturday* following.

Then, upon *Saturday* the 7th of *May*, the *Attorney General* began, ſaying, This is a Plea to the Juriſdiction of the Court, and ſome of our Exceptions are to the form, and one is to the matter. To the Form,

1*ſt*, The general Allegation, that he was impeached *de alta Proditione*, is uncertain, it ought to have been particularly ſet out, that the *Court* might judge, Whether it be the ſame Crime; *and it is not helped by the Averment.*

2*dly*, Here is no *Impeachment* alledged to be upon Record; They make a general Allegation, that *F. Harris* was Impeached, *Impetitus fuit*, by the *Commons*, before the *Lords*, *Qua quidem Impetitio in pleno robore exiſtit, prout per Recordum inde, &c.* Now, there is no Impeachment mentioned before; And *qua quidem Impetitio*, is a relative Clauſe; and no Impeachment being mentioned before in the Plea, there is nothing averred upon the Record to be continued, or diſconti-

diſcontinued; for *Impetitio*, does not actively ſignifie the Impeaching, or paſſively the Perſon Impeached; but it ſignifies the Impeachment, the Accuſation which is to be upon Record: Therefore, when they ſay, he was impeached, and afterwards alledge, *Que quidem Impetitio*, remains upon Record; that cannot be good, for the Relative there, is only Illuſive.

For the matter of the *Plea*; 'tis a Plea to the Juriſdiction of the *Court*; There the point will be, *Whether a Suite depending, even in a Superior Court, can take away the Juriſdiction of an* Inferiour Court, *which had an* Original Juriſdiction *of the Cauſe, and of the Perſon, at the time of the Fact committed*; I inſiſt upon theſe Exceptions.

*Mr Williams* (for the *Priſoner*) then ſaid, I take theſe things to be admitted, (*Mr Attorney having demurred generally.*)

1. *That the Priſoner ſtands Impeached.*

2. *That the Impeachment is now in being.*

3. *That this was done*, ſecundum Legem & Conſuetudiem Parliamenti; *and being ſo, remains in plenis ſuis robore & effectu*; And more particularly, the Plea, refers to the *Record*, for the parts and Circumſtances

Circumstances of the *Impeachment*; *prout patet per Record.* So that it refers the *Impeachment* to the *Record*, and tells you, 'tis amongst the Records of that *Parliament*.

4. Moreover, *That the Treason in the Impeachment, and the Treason in the Indictment, are one and the same; and that this Person* Fitz-Harris *indicted, and* F. H. *impeached, are one and the same Person*; And withal, it appears upon the Record, that this *Impeachment* was depending, before the *Indictment* found, for the *Parliament* was the 21st of *March*, and it appears this is an *Indictment* of this *Term*; And further, it appears not, by any thing to the contrary in the Record, but that this *Parliament* is still in being, and then it must be admitted so to be —— Whether your *Lordship*, now, will think fit in this Court, to proceed upon that *Indictment*, is the substance of the Case.

I think it will not be denyed, but that the *Commons* may Impeach any *Commoner*, before the *Lords*; *That was the Case of* Tresilian *and* Belknap, *in the time of* Richard *the second*; *Upon that Impeachment, one of them was* Executed, *and the other* Banished *in* Parliament.

My

*Mr Attorney* allows the *Parliament*, to be a *Superior Court*; but says, yet the *Inferiour Court*, having Original Jurisdiction of the Person and Cause, may proceed, notwithstanding an *Impeachment* in *Parliament*; I will shew how manifestly, an *Indictment* and an *Impeachment* differ ——The Case of an *Appeal*, is like the Case of an *Impeachment*: *An Appeal* of *Murder*, is at the suite of the *Party*; and in this case, 'tis at the suite of the *Commons*; tis not in the Name of the *King*, but of all the *Commons of England*; So that 'tis like an *Appeal*, and not like an *Indictment*, *an* Indictment *is for the* King, *an* Impeachment *for the* People—— *It is not safe to alter the old ways of Parliament*; 'tis out of the road of Comparisons, when they will compare an *Indictment*, and an *Impeachment* together.

*It becomes not the Justice of this Court, to weaken the Methods of Proceedings in Parliament*; Your proceeding upon this *Indictment*, is to subject the Method of their *Proceedings* there, to the *Proceedings* of this *Court*—— It is not fit, that the Justice of the Kingdom, and the *High Court* of *Parliament*, should be crampt, by the Methods of an *Inferiour Court*, and a *Jury*.

The

The *Parliament* is the *ſupreame Court*; nd this Court every way inferiour to t; and 'twill be very ſtrange, that the upreame Court ſhould be hindred here. For the higheſt Court is always ſuppoed to be the wiſeſt, and the *Commons* n *Parliament*, a greater and wiſer Body, han a *Grand Jury*, of any one *County*: nd the *Judges* in that *Court* (the *Peers*) o be the *Wiſeſt* Judges: *Will the* Law *of* ngland *ſuffer an Examination, Impeachent and Proſecution for Treaſon, to be taen out of the Hands of the greateſt and iſeſt* Inqueſt *in* England? *And will it ffer the* Judicature, *to be taken out of the ands of the* wiſeſt Judges?——It ſtands ot with the Wiſdom of the *Law*, or of he *Conſtitution* of the *Government*.

Another thing is this (*the common rgument in an extraordinary Caſe*) there no *Precedent* for this way of Proceedng; 'Tis my *Lord Cok's* Argument (*Coke's Littleton*, fol. 108. and in the th *Inſtit.* fol. 17.) - in the Caſe of the ndictment againſt the *Biſhop* of *Wincheer*; and of that againſt Mr *Plowden*; ——He ſays, *'tis a dangerous attempt for nferiour* Courts *to alter, or meddle with he Law of Parliaments.* So, in this caſe

case, in regard it never was done from the beginning of the World till now, in being without President, there is no Law for it.

Another mischief, which follows upon this, is; If you take this Case out of the power of the *Parliament*, and bring it into this *Court*; where the Offence may be pardoned; you change the method of proceedings, which make the Offence, without consent of the *Prosecutors*, not pardonable by Law; This may be of dangerous consequence to the Publick——by giving this *Court* a *Jurisdiction*, and possessing it of these Causes, expose them to the will of the *Prince*.

This way of proceeding, inverts the Law in another thing; 'Tis a *Principle, that no man's Life is to be put twice in danger, for the same thing*: If you proceed upon this Indictment, and he be acquitted, will that acquittal bind the *Lords* in *Parliament*? If they may proceed upon the *Impeachment*, then you invade every *English-man's* right, and his Life may be brought in question, twice upon the same account.

I take it to be a Critical thing, now at this time, to make such attempts as

these

theſe are; There are *Lords* now that lie under *Impeachments* of *Treaſon*; if you goon in this; do you not open a Gap that may be a ground to deliver them; By the ſame Juſtice, the *Lords* may be tryed by another Court; —— This proceeding will have this effect; it will ſtir up a Queſtion, between the *Juriſdiction* of this *Court*, and the *Parliament*; for in probability, if this Perſon be acquitted, the *Commons*, and the *Lords* too, will look into it; —— *If he be found guilty; here is the Power of the* Commons, *in* Impeaching; *and the* Juriſdiction *of the* Lords, *in* Tryal *and* Judgment, *taken away by an* Inferiour Court: This being ſaid in general, I come to the particular *Exceptions* made by *Mr Attorney*, to the form of the *Plea*.

He inſiſts, that this *Plea*, doth not ſet forth any *Record* of an *Impeachment*; nor the particular matter of it; and compares it to the Caſe of a Plea, of *Autre foitz acquit*; If a Man has been Indicted and Acquitted, he may plead it in another Court; that hath Juriſdiction of the Cauſe, if again Indicted for the ſame matter.

I ſay, I take this to be a very good

*Plea*, and that according to the pleading of *Auter foitz acquit*; In pleading a General *Act of Parliament*, We need not set forth the whole *Act*, but refer to the *Record*;——In the Case of *auter foitz acquit*; there is an *Indictment*, *Proceeding* of the *Court* upon the *Plea*, a *Tryal* and an *Acquittal*, and a *Record* of all this matter; and if the party be again Indicted, he hath a Record to plead, which will shew the whole matter; and if he does not plead it, 'tis his own default; But in this Case, here is no such Record to plead; and there is *Mr Attorney*'s mistake; you must in this Case, be governed by the *Rules* and *Methods of Parliament*, which is this; the *Commons* Impeach a Man, and bring up the *Impeachment* to the *Lords*, in general; and have Liberty to present *Articles* after due consideration——It is said in this Plea, that it is *secundum legem & consuetudinem Parliamenti*,——you are to take notice of the Law of *Parliaments*, and *Customs* of *Parliaments*.

The *second Exception* is, That it is not said in the body of the *Plea*; that *Fitz-Harris* is Impeached for this *Treason*, but it comes in only in the *Averment*.

As

As to that; we muſt purſue the *Impeachment* as it is in the *Lords Journal*; 'tis for *Treaſon* generally, there; and 'tis ſaid to be, *ſecundum Legem, & conſuetudinem Parliamenti*; which goes to all, and there is a Record of it, among the Records of *Parliament*; and *Mr Attorney* hath confeſſed it by the *demurrer*; And this is the ſame Treaſon, we do aver, in fact; which alſo is confeſſed by the *demurrer*.

*Mr Attorney* hath fancied an exception of *Grammar*; an Adjective for a Subſtantive; but, I take it to be as well as any Man can plead in this caſe; The Priſoner ſays, the *Commons* Impeached him; which *Impeachment* is ſtill in force before the *Lords*; It is as plain as can be, if they did *Impeach* him, then there was an *Impeachment*; it can bear no other ſence.

Another *Exception*, and which was ſtrongly urged, is, *That the King may chuſe his Court*; 'Tis no doubt, the *King* may chuſe his Court, for his own Action; but the *Impeachment* is the Suit of the *Commons*; and that is to be tryed in *Parliament*, and no where elſe.

I have offered theſe Reaſons, as to the form of the Plea to maintain it; As to the *Precedents*,

There was the *Biſhop* of *Wincheſter*'s Caſe 3 *Edw.* 3. in *Coke*'s 2 *Inſt.* fol. 15, the Record is recited *de verbo in verbum*, It was not an *Indictment* my *Lord Coke* ſays, it was a *Declaration*; the *Record* ſets forth, that the *Biſhop* was attached to anſwer the *King*; for that, whereas it was ordained, *Per Ipſum Regem, Ne Quis ad domum Parliament. ſummonitus, ab eodem recederet ſine Licentia Regis*; And that the *Biſhop*, in contempt of the *King*, *receſſit*, without his leave; The *Biſhop* comes and ſays, *Si Quis deliquerit erga dominum Regem in Parliamento aliquo, in Parliamento debet corrigi & emendari, & non alibi in minori Curia Quam in Parliamento, &c.* We find no Judgment given upon this Plea, *nor would they venture to do it*; My *Lord Coke* ſays, *It looks as if there was a deſign to weaken the Parliaments, by bringing their Proceedings into Weſtminſter-Hall*; but they would not do it.

Then, there is the Caſe of *Mr Plowden*, and others, 1ſt. and 2d. *Phi.* and *Mar.* the *Information* is this; *That they*

*wer*

*were ſummoned to Parliament, and departed without leave of the* King *and* Queen, *tho' they had prohibited that any ſhould depart*; Mr *Plowden* pleads a Plea, a hundred times as faulty as ours, if ours be faulty; and yet this Caſe continued all the time of that *Queen*, and it appearing, upon the face of the *Information*, that the Caſe concerned the *Commons*, *the Court would not give Judgment for or againſt the* Commons.

There is alſo *Elliot's* Caſe, 5 *Car.* There was an *Information* againſt my *Lord Hollis*, *Sr John Elliot*, and many more; *They plead to the Juriſdiction of the Court*; their *Plea* is, in a manner, as faulty as *Plowden's*; but the *Court* goes not upon the inſufficiency of the *Plea*; *but gives Judgment generally*; *that this Court had a Juriſdiction*; The aſſault happen'd in *Parliament*, the Words were ſpoken there, and upon the *demurrer*, they gave Judgment upon the whole matter; This *Judgment* was reverſed 19 *Car.* 2. The Judgment was given againſt theſe *Gentlemen* of the *Houſe of Commons*. Their *Plea* was a *Plea* in *Abatement*; They thought it a very hard Judgment, and were obſtinate, and

would not plead over; and Judgment was given for want of a Plea; they were fined ſeverely, and continued in Execution for the Fines, & were delivered by the *Parliament*, 16 *Car.* 1. & in the ſecond Impreſſion of *Croke's Car.* it is ſaid, *That the Houſe of Commons*, 19 Car. 2. *voted, That the Judgment was illegal, and againſt the freedom and liberty of Speech*; and that the *Lords* concurred in that *Vote*; And, upon the *Reſolution* of both *Houſes*, the *Judgment* was reverſed by *Writ* of *Error*; *If in our* Caſe, *you ſhould give* Judgment *againſt the* Priſoner's *Plea, and he ſhould prove obſtinate, and not plead over, and you give Judgment of Death upon him. It may come to be a very hard Caſe, if your Judgment ſhould be reverſed by* Writ *of* Error *in Parliament, when the party is dead.* *

20 *Rich.* 2. Ro. Parl. 12. *Ruſhworth* 47. 48. A Perſon preſented a Petition to the *Commons*, and ſomething ſuggeſted therein, amounted to *Trea-*

* *Sr Francis Winnington* (in his Argument) added to this, that it was agreed by the *Lords*, unanimouſly, that the Judgment was erroneous, and that the Parties ſhould be reſtored to all that they had loſt, *but if this Man ſhould loſe his Life by your Judgment, what help would there be, upon a* Writ *of* Error?

*Treason*; He was Indicted out of *Parliament*, and found guilty; But, (though he was pardoned) because the *Commons* would not lie under that *Precedent* of an *Invasion* of their *Priviledge*, tho' he was a Person without Doors, and no more hurt done to him, but the prosecution; the Judgment was voided.

*Mr Williams* then concluded his *Argument*, thus; *My Lord*, I have done with my Reasons for the matter and for the form; *Here is the Life of a Man before you, here is the right of the Commons to Impeach in* Parliament, *before you*; *Here is the* Judicature *of the* Lords *to determine that* Impeachment *before you*; *Here is the Method and Proceedings of Parliament before you*; and I hope you will proceed no further on the *Indictment*.

The *Cheif Justice* then said, *Here is nothing of the* Commons *Right to* Impeach, *before us*; *nor of the* Lords *Jurisdiction*; *nor the Methods of* Parliament, *in this Case*; the sole matter is, whether this be a good Plea, to oust the Court of its Jurisdiction in this matter; To which,

*Judge Jones* added, Here is nothing of any fact done in *Parliament*, insisted on here; this is for a thing done without Doors.

*Mr Williams* replyed, 'Tis a hard matter, (*my Lord*) for the *Bar* to answer the *Bench*.

*Sr Francis Winnington*, then argued for the *Prisoner*, thus; The *King's Attorney* has demurred generally; and if our *Plea* be well and formally pleaded, I am sure, *all the matter of fact is confessed by the* demurrer. And upon the matter of fact so agreed, the general Question is,

*Whether an Impeachment by the Commons, and still depending, be sufficient to oust the Court to proceed upon an Indictment for the same offence?*

The *Lord Chief Justice* said, That cannot come in question in the Case.

Sr *Francis Winnington*, replyed, Why my Lord?

*Chief Justice*, The Question is, Whether you have pleaded sufficient matter to oust us of our Jurisdiction.

Sr *Francis Winnington* proceeded, saying, My meaning is the same; It is agreed that there were no doubt to be made of the Plea, if there had been a particular *Impeachment*——*The House of* Lords *is a Superiour Court to this, and a Suit in a Superiour Court, may be pleaded*

to

*to ſtop the Proceedings of an Inferiour Court; and if once the Suit be well commenced in the Superiour Court, it cannot after go down to the Inferiour*; and what is begun in one *Parliament*, may be determined in another; So is the Caſe 4. *Edw.* 3. N. 16. of the *Lord Berkley*, and thoſe accuſed of the death of *Edw.* 2. It was there objected, as 'tis here, that by this means there might be a ſtop of Juſtice, by the diſſolution of the *Parliament*; yet the true anſwer is, That it is preſumed in Law, that *Parliaments* will be called frequently, according to the *Statute*, 4 *Edw.* 3. 14. 36 *Edw.* 3. 10.

*This Record is well pleaded, and could not be otherwiſe*, unleſs Mr *Attorney* would have us plead what is falſe; the *Commons* Impeached *Fitz-Harris* generally, and We alledge in our Plea, that 'twas, *ſecundum legem & conſuetudinem Parliamenti*, and ſo 'tis confeſſed by the *Demurrer*.

A general *Impeachment*, is good by the Law and courſe of *Parliament*; *Coke* 4 Inſt. 14, 15 ſays, *What the Law and courſe of Parliament is, the Judges will never intermeddle with.* We find 11 *Rich.* 2. *Rot Parl.* part 2. and *Raſhworth*, part 1. in the *Appendix*,

pendix. 51. *Treſilian* and others, *were appealed againſt for Treaſon*, the *Judges* of the *Common* and *Civil Law*, were called by the *King*, to adviſe of the matter; they all agreed, that the Proceedings were neither agreeable to Common, or Civil Law; *But, the* Lords *ſaid, it belonged not to thoſe* Judges *to guide them; but they were to proceed according to the* Courſe *and* Law *of* Parliaments; *and no Opinion of theirs, ſhould ouſt them of their Juriſdiction.*

31 *H.* 6. *Rot. Parl.* N. 26. The *Judges* were demanded, whether the *Speaker* of the *Commons*; during an Adjournment, might be Arreſted; They excuſed themſelves, ſaying, *That in this great matter, they ought not to interpoſe, it being a matter of* Parliament.

In the great *Council* 1*ſt.* and 2*d. Jac.* The *Judges refuſed to give their Opinions*, upon queſtions put to them, about the *Union* of both *Kingdoms*; *for that ſuch things did not belong to them, but were matters fit for Parliament only*; Hence I infer, that ſince 'tis Pleaded here to be according to Law of *Parliaments*, and Mr *Attorney* hath acknowledged it; that *you are fore-cloſed from meddling further with this Caſe*; it being

*being a matter whereof you cannot judge.*

But,

'Tis objected, That, *if the* Impeachment *be admitted to be according to the course of* Parliament; *yet, 'tis so general the* Court *cannot judge upon it:*

*Answer*, The House of *Commons* would not Impeach a Man for no Crime; *The* Prisoner's *Plea avers, that that it was for the same Treason in the* Indictment; this makes the matter as clear to the *Court*; as if the *Impeachment* had mentioned the particular *Treason.*

26 *Assiz.* Pl. 15. *Stamf. Pla. Cor.* 105 A Man Indicted for the Murder of *I. S.* pleads a Record of *Acquittal*; where he was Indicted for the Murder of *I. N.* but avers, that *I.S.* in this Indictment, is the same Person with *I. N.* in the other Indictment; and it was adjudged a good *Plea*, tho' the *Averment* seemed to contradict the *Record*; This makes it clear, that *if an Averment may consist with the Record, the Law will allow it.*

Mr *Attorney* had his Election, either to plead *Nul Tiel Record*; Or he might have taken Issue upon our Averment, that it was not for one and the same Offence; but, *he has demurred, and thereby confessed,*

*ſed, there is ſuch a Record; and confeſſed the Averment to be true, that he was Impeached for the ſame Crime, and that he is the ſame Perſon.*

I ſhall now offer ſome Reaſons in general,

1*ſt*, That when the *Commons* in *Parliament*, in the name of all the *Commons* of *England*, have lodged an *Impeachment* againſt any Man; it ſeems againſt natural Juſtice, that any *Commoners* ſhould afterwards try or judge him for that Fact; *Magna Charta* ſays, *That every Man ſhall be tryed by his* Peers; *or by the Law of the Land*; This is a way of *Tryal* by the *Law* of the *Land*, but not by his *Peers*; for 'twould be hard, that any Man ſhould come to *Try* or give *Judgment*, upon a Perſon, who hath been his *Accuſer* before; The Lords are here *Judges*, in point of Fact, as well as Law; the *Commoners* may come in as *Witneſſes*, but not as *Judges*.

2*d*, Reaſon, If an *Appeal of Murder* were depending before the *Statute* 3 *H*. 7. 1. The *King* could not proceed upon an *Indictment* for the ſame Fact, becauſe the *King* only takes care, that the *Offender* ſhould not go unpuniſhed; but the prefer-

rence

rence was given to the Person more particularly concerned, *and the* King's Indictment *must stay, till the year and day were out, to see whether the Person immediately concerned, would prosecute the Suit*; so says *Lord Hales*, in his *Pleas* of the Crown; Then a *Minor iad Majus*; does the Law so regard the Interest of the *Wife* or *Heir* &c, in their Suit; and has it no regard to the *Suit* of all the *Commons* of *England*? for, manifestly *an Impeachment, is the Suit of the* People, *and not the* King's *Suit*.

3*d* Reason, *If this Man be tryed and acquitted here, Can he plead this in Bar to the* Impeachment? it cannot bar that *great Court*, by saying he was acquitted by a *Jury* in *Westminster-Hall*; and if so (contrary to a fundamental Rule of Law) *a Man shall be twice put in danger of his Life, for one Offence*.

I will now mention *Precedents* to prove that this *Impeachment* is according to the *Course and Law of Parliaments*. *Michael de la Poole*, *Rot. Parl.* 18 or 28 *H.* 6. *N.* 18. was accused by the *Commons* of Treason, and there 'tis said, that the Course of *Parliament*, is to find out the Truth by Circumstances, and such Degrees as

the

the nature of the thing will bear; and they are not confined to the ſtrict Rules of other Courts; The *Earl of Clarendon* was Impeached generally, and the *Commons* took time to bring in their Articles. I have had the Experience in three or four *Parliaments*, (*wherein We have been buſied with Impeachments; tho' We have had no great ſucceſs in them*) That, tho' the *Commons* may carry up particular *Articles* at firſt; yet the Courſe is, for the *Lords* to receive the *general Impeachment*; and the *Commons* ſay, that in due time, They will bring in their *Articles*; So it was done in the Caſe of the five *Popiſh Lords*; and in that Caſe, tho' the *Parliament* was Diſſolved before any Articles ſent up; yet, in the next *Parliament*, the *Articles*, upon the former *Impeachments*, were ſent up and received; yet, *Indictments* were againſt them, before any *Impeachment*, and preparations made for their *Tryals*; but there hath been no attempt to try them upon the *Indictments*, tho' there have been ſeveral Intervals of *Parliament*.

Our Caſe, is ſtronger than that of the *Lords*; for in this, the firſt Suit was in the Houſe of *Lords*; but in the other Caſe, the firſt was the Suit of the *King*,

by

by *Indictment*; and yet, by a subsequent *Impeachment*, that was stop'd, and the *Lords* are yet *Prisoners*.

*For the* Objection, *That the* King *may chuse in what Court he will sue*; *It is agreed, when it is at his own Suit*; *but this is not so, but at the* Commons *Suit, and can be no where else prosecuted but where it depends.*

To conclude, This *Plea* cannot be *over-ruled*, without deciding, *whether the* Lords *can proceed upon such* general Impeachments, *and whether the* Commons *can Impeach in such a general way*; *This Case highly concerns the* Jurisdiction *of the* Lords; *the* Priviledges *of the* Commons, *and the Rights of all the* People *of* England.

Mr *Wallop* (*for the Prisoner*) then argued thus; There are in this *Plea*, three principal parts, upon which it turns, which are expresly alledged, 1*st*, *That the Prisoner, before the Indictment, was according to* Law *and* Custom *of* Parliament *Impeached.* 2*d*, *That the* Impeachment *remains in force.* The 3*d*, great Point and Hinge upon which it turns, is this, *That the Treason in the Indictment, and the Treason for which he was Impeached, is one and the same Treason*; These three things are confessed

fessed by Mr *Attorney*, for all things well alledged and pleaded, are confessed by the *demurrer*.

I pass the two former points; there being no difficulty in them; I take the third to be the only point in the Case; and if We have well averred it, and can by Law be let into such an *Averment*; *I hope this Court will not pretend to go on in this Case*; They object; because he is *Impeached* generally, that cannot be averred to be the same; and a *Demurrer* confesses not the Truth of that, which by Law cannot be said; But if it may be said, and is said plainly, Then the *Demurrer* confesses it.

I conceive the matter is well averrable, and We have well averred; I grant, *a Repugnant and impossible Averment cannot be taken*; But if there be no impossibility, repugnancy, or contradiction, between the matters averred to be the same; it is not only allowable to averr it, but most proper; For, *quod constat clare, non debet verificari*; In this Case, 'tis not necessary, that it should appear upon view of the *Indictment* and *Impeachment*; that the matter contained in both, is the same; But its sufficient, that it be provable upon an Issue to be taken; and so much is admitted

admitted by the *Judges*, in *Sparrye's* Case, *Co.* 5. *Rep.* 51.——If this matter may appear at first or at last, and the thing is possible to be proved, We are well enough, *Corbet* and *Barnes Case first*, *Croke fol.* 320.

By taking the *Auerment*, We offer them here a fair *Issue*, *an Issue of fact tryable by a Jury*; but the *Attorney* refuses that; and having *demurred*, it must be taken to be true, as if found by a *Jury*; And, if they had taken *Issue* upon this *Question of fact*, We might have gone to a *Jury*, where the matter would have been easily proved; For upon evidence given, *The* Jury *might fairly take into consideration, the reading of this very Nuncupative Libel, set forth in the* Indictment, *and the particular and special* Debates, *of the* House *of* Commons *thereupon*: *And that, upon those very* Debates, *the* House *voted that* Fitz-Harris *should be* Impeached *for matters in that* Libel, *and that upon those Votes, the* Impeachment *was carryed up to the Lords*; This is Evidence sufficient, that the *House* of *Commons* intended to accuse him of the same *Treason*; which proves the *Issue* (viz.) *That the Treason in the* Impeachment, *is the same with that*

*in the* Indictment; This is not to put the Intention of the Mind, or secret Thoughts of the Heart in issue, but to put them into a way of proof——In the present Case, the *Intention* of the *Commons*, upon the *Issue* we offered, and the *Attorney* refused, might, and ought, and would have been proved, and without doubt, found by the *Jury*; Neither is this *general Impeachment* such a notional thing as is pretended; but 'tis, as if the *Commons* in *Parliament* should say, We charge him with Crimes that are *Treason*; Now, whether those Crimes are the same, with those for which he is Indicted, is a good and proper *Issue*; And if it appears to the *Court* to be the same, *you will certainly take off your Hands from these Proceedings.*

Again, they say, *The Impeachment is too general, and no Man shall be put to answer to such a general Accusation.*

And I say so too; neither shall *Fitz-Harris* be put to answer to it, without special *Articles*,——But here, *by the Law of Parliament, general Impeachments are held good*; and *Articles*, and *Additional Articles* also, are usually brought in afterwards; And therefore, We must take

take the *Impeachment* as We find it, which ſtands againſt us as a Record, and We muſt plead it in the ſame generallity.

This *Impeachment*, according to the courſe of *Parliament*, is well lodged in the *Houſe* of *Lords*; where it only ought to be tryed; and we muſt plead it, as we find the Caſe to be; And having averred the Crimes to be the ſame; We have done what we could, and therefore enough. And,

*That a general* Impeachment *without Articles, is a bar to any* Indictment *for the ſame matter*, was reſolved by all the *Judges* (*as I am informed*) in the Caſe of the *Lords* in the *Tower*, *who were indicted for Treaſon*, and afterwards (5th of *December* 1678.) *generally Impeached*, and no *Articles* exhibited, till the 3d of *April*, 1679; And yet, in the mean time, the *Judges reſolved it at the* Council-Table, *that they could not be proceeded againſt upon theſe* Indictments; *tho' the* Parliament *was diſſolved*. That was a ſtronger Caſe, than this of *Fitz-Harris*, for there, the *Inferiour Court* was firſt poſſeſſed of the Cauſe, and yet, the *general Impeachment tyed up the Hands of the Court*; But here, the *Parliament* was firſt poſſeſt of the

Cauſe; which the *Inferiour* Court cannot take out of their Hands;

An *Impeachment* differs alſo from an *Indictment*, in that in an *Indictment* you cannot plead *auter foitz Arraigned*; but muſt plead *Auter foitz Convict, or Acquit*; as in Sr *William Wiſhople's Caſe*; But in an *Impeachment*, They will acknowledge, that after *Articles* exhibited, They cannot proceed upon an *Indictment*, for the ſame Offence; although the Defendant be neither Convict or Acquit.

I ſhall ſay no more, but obſerve how ſcrupulous the *Judges* have been, to touch upon a Caſe, where they had the leaſt ſuſpition that the *Parliament* had, or pretended a *Juriſdiction*; or were poſſeſſed of the Cauſe; *I am ſure, I could never obtain any thing by any Labours of mine in thoſe Caſes; But upon ſuch Motions They (being aware of the Conſequence) would always worſhip afar off, and never come near the* Mount: *They ever retired, when They came near the Brink of this* Gulf.

*My Lord!* If you retain this Cauſe; in conſequence *you charge your ſelves with this Adams Blood*, ——— I leave it to your Wiſdom to conſider it.

Then

Then *Mr Pollexfen* proceeded thus; I ſhall not make any long Argument; But I would fain come to the *Queſtion*, if I could; for I cannot ſee what the other ſide make the Queſtion; Our *Plea* is objected againſt, both for the matter and form; But, if for the matter, it be admitted, *that an* Impeachment, *for the ſame matter, will out this Court of* Juriſdiction, I will ſay nothing of it, for that is not then in Queſtion.

The *Chief Juſtice* aſſented to this, ſaying, *No, not at all.*

Then *Mr Pollexfen* added, The matter then ſeems to be agreed, and only the manner and form of the *Plea* are in queſtion; for the manner, they ſay, 'tis not alledged there is any *Impeachment* upon Record; I confeſs Form is a ſubtile matter in it ſelf, and 'tis eaſie for one that reads other Mens Words, to make what Conſtruction he will of them, even *Nolumus* to be *Volumus*; To anſwer the *Objection*, I think 'tis as ſtrongly and cloſely penn'd, as can be; *He was Impeached*, *Quæ quidem Impetitio, &c.* What can the *Quæ quidem* ſignifie, but the *Impeachmem* juſt mentioned before.

The great Queſtion now is, whether

this be not too general, to alledge that he was *Impeached* in *Parliament*, and not saying how, or for what Crime; tho' there be an *Averment* that 'tis for the same Crime; whether this *Plea* should therefore be naught.

*1st.* For this of the *Averment*, be the Crimes never so particularly specified in the Record that is pleaded, and in that upon which the party is brought in Judicature; yet there must be an *Averment*, which is so much the substantial part of the Plea, that without it, it would be naught; and it must come to be tryed *Per Pais*, whether the Offence be the same or not; Then the Objection to the generallity, is not to the substance, but rather an Objection to the Form, on their side, because the *plea alledges* the substance, that 'tis for the same *Treason*; which, had not *Mr Attorney* demurred, but taken Issue on, must have been tryed *Per Pais*.

To speak to the general Allegation; that he was *Impeached* for *Treason*, and not saying particularly, what the fact was.

If they admit the Law, *That an Impeachment suspends the Jurisdiction of this Court*; They admit a great part of the fact; and then the *Question* will be, what *Impeachment* will take away the *Jurisdiction*?

*diction*? and there can be but two ſorts; the one at large, where the Offence is ſpecified; the other in general words, where the *Commons Impeach* ſuch a one of *Treaſon*; Now, if ſuch an Impeachment be good, then have we the moſt plain Caſe pleaded that can be; as plain as the Fact, that this is an *Impeachment* in *Parliament*, and then this *Court* is ouſted of its *Juriſdiction*.

The *Court*, and *We*, are to take notice of the proceedings in other *Courts*; as other *Courts* are to take notice of the proceedings of this; generally the *Writ* or *Declaration* (as 'tis in *Sparrye's Caſe*) does in all Civil Cauſes, ſet forth the particularity of the thing in queſtion; yet in ſome Caſes it doth not do ſo; but the Courſe and Practice of ſome Courts admits general proceedings; Now where that is ſo, the party cannot mend himſelf, by making their Courſe otherwiſe then it is; for he muſt not ſay, it is more particular then the Courſe of the Court does make it; Therefore, he hath no other way by the Law, to bring his matter on, and help himſelf, but by an *Averment* that 'tis the ſame;——The Law muſt be go-

vern'd by its own proceedings, and take notice of the nature of the things depending before the Court; and if there is as much of certainty set forth, as the Case will admit, and is possible to be had; We must permit the party to plead as he can, and help himself by the *Averment*.

Then, the *Question* is, Whether an *Impeachment*, *generally be good or no*? If they say, it is not, then the bottom of the *Plea* is naught, and all is quite gone; But if they say it is, then I have pleaded my matter as it is; For I cannot say, that that is particular, or make that particular that is not; and I have done all that is possible for me to do in my Case; I have pleaded what is in the *Record*, and as 'tis in the *Record*, from which my *Plea* must not vary; and *I have averred 'tis for the same matter*, and you have confessed it by the *demurrer*.

I would not entangle the *Question*, but I see not how they can extricate themselves out of this *Dilemma*, if they admit a general *Impeachment* is good.

In *December* 1678. the *Lords* in the *Tower* were Indicted, and after (*Decem.* the 5*th*) the *Commons* considering that it

it was intended to bring them to *Tryal* before the *Peers*; They, purpoſely to have the carriage and proſecution of this horrid *Treaſon*, and to take off the Proſecution upon the *Indictment*; *Impeach* the *Lords*, and the *Impeachment*, is juſt the ſame as this in our *Plea*; of *Treaſon*; but not of any particular Fact: Now the *Judges* took ſo much notice of it, that tho' the *Parliament* was diſſolved, before the particular *Articles* were carried up; yet in *February* following (*ſome of the* Judges *are here, and they will rectifie me, if I am miſtaken*) the *Opinions* of the *Judges* being asked about it, at the *Council-Board*; upon the *Petition* of the *Lords*, to be either bailed or tryed; *They declared*, *that the* Impeachment, *tho' thus general, was ſo depending in Parliament, that they could not be tryed.*

*We* have pleaded, as our Fact is, an *Impeachment* of *Treaſon*; what would They have had us to do, or wherein is our fault? What would They have had us ſaid, We were *Impeached* of *Treaſon*, ſo and ſo particularizing? how can that be? There is no ſuch thing; Then they would have us ſaid, *Nul tiel Record*, and We muſt have been condemned for failing in

our

our *Record*; then indeed we had been where They would have had us; but having done according to our Fact, if that Fact will ouſt this *Court* of *Juriſdiction*, I ſee not how we ſhould plead otherwiſe; or what anſwer they will give to it.

This muſt needs be agreed to me; *If this Impeachment be in the nature of an Appeal*; ſurely an *Appeal* does ſuſpend the Proceedings upon an *Indictment* for that Fact; and ſo 'tis expreſly, in my *Lord Dyer*, fol. 296. *Stanley* was indicted and convicted of Murder, and before Judgment, the *Wife* brought her *Appeal*; and They moved for *Judgment*; No, ſaid the *Court*, here is an Appeal brought; They could not go to *Judgment* till the *Appeal* was determined; ſo the *Stat.* 3. *H.* 7. *Cap.* 1. and *Vaux's Caſe*, 4 *Rep.* 39. If this then be of the nature of an *Appeal*, this Suit ought to have its Courſe and Determination, before you proceed on this *Indictment*.

*Inferiour Courts* have never taken upon them to meddle with the Actions of *Superiour Courts*; but leave them to proceed according to their Laws; and if that be done in any Caſe, there will be

as

as much regard had, in this great Cause to the *Court of Parliament*, as in others.

In the *Earl of Northumberland's* Case, (*Cotton's Records* 5 *H.* 4. fol. 426.) He confesses himself guilty of an Offence against his *Allegiance*; the *King* would have the *Justices* to consider of it; No, said the *Parliament*, *'tis matter of Parliament, and the* Judges *have nothing to do with it*; The *Lords* make a *Protestation* to this purpose, and went on themselves, and adjudged it to be no *Treason*; There is that *Record* more, *Rot. Parl.* 11 *R.* 2. *Pars* 1. *N.* 6. I only offer these things, with what my *Lord Coke* sayes, *Hath been formerly thought Prudence in the* Judges *to do.*

So I hope, That *if the matter be good, the form is as good as the matter can be put into*; and therefore we hope you will allow us the benefit of it.

The *Attorney General* argued thus for the *King*; Notwithstanding what hath been said, I take it, this is a *Naughty Plea*; and there is no matter disclosed therein, that we can take *Issue* upon.

The great substance of the *Arguments* of the *Prisoners Counsel* is against him; for

for 'tis least he should escape, but he pleads this *Plea* that he might escape.

For the Cautions given you; what a difficult thing it is, for two *Jurisdictions* to interfeir; *Fitz-Harris* is much concerned in that matter, who hath forfeited his Life to the Law; yet he would fain live a little longer; and is concerned that the *Judicature* of *Parliament* should be preserved.

I observe 'tis an unusual *Plea*; It concludes *Si Curia procedere velit*; I wonder they did not put in, *aut debeat*; you have no Will but the Law, and if you cannot give Judgment, you ought not to be pressed in it; but it being according to Law, that *Malefactors* be brought to condign punishment, We must press it, whatsoever the Consequences are; It is the Interest of all the *Kingdom*, as well as of the *King*, that so notorious a *Malefactor* should not escape, or the Truth be stifled, but brought into Examination in the face of the Sun; but They say, if it be not Law, you will not proceed, it ties up your Hands; But they give not one Instance to make good what they say.

Put the Case, it had been a good *Impeachment*

peachment, & he had been arraigned upon it and acquitted; and had afterwards come to be Indicted in this *Court*, and would not plead this in *Bar*, but to the *Jurisdiction*; it would not have been a good *Plea*; Then certainly, an *Impeachment* depending singly, cannot be a good *Plea* to the *Jurisdiction*.

This *Court* hath a full *Jurisdiction* of this *Case*, and of this *Person*; and this you had at the time of the Fact committed; What then is it, that must oust this Court of *Jurisdiction*; For all the Cases that have been put, about matters not originally examinable in this *Court*, make not to the matter in question; where the Fact is done out of the *Jurisdiction* of the *Court*, that may be pleaded to the *Jurisdiction*; but, where the *Court* may originally take *Cognizance* of it, I would know, what can oust that *Jurisdiction*, less than an *Act* of *Parliament*; I will be bold to say, the *King* by his *Great Seal* cannot do it. To say the *Proceedings* in *Parliament* ought to be a *Bar*; that is another Case, the Party may plead it in *Abatement* or *Bar*, as the Case requires: For the *Cases* they put, the Reasons are, that the *Court* had

had no *Original Jurisdiction*. There is not one of the *Cases* cited, but where it was out out of the *Jurisdiction* of the *Tower originally*.

As for the *Case* of the *five Lords* in the *Tower*; I observe the *House* of *Lords* removed the *Judiciment* into their *House*; fore-seeing that the *King* might have proceeded upon them, if not removed thither; But our Case is quite another thing, for those *Lords* were not fully within your *Jurisdiction*.

The *Case* of 11 *R.* 2. will be nothing to our purpose at all; that was in the *Case* of the *Lords Appellants*, a proceeding *contrary* to Magna Charta, *contrary to the* Statute of Edw. 3. *and the known Privileges of the Subject*. Those proceedings had a Countenance in *Parliament*; and they would be controuled by none, nor be advised by the *Judges*; but proceed to the trying of *Peers* and *Commoners*, according to their own Will and Pleasure: And between the time of 11 *R.* 2. and 1 *H.* 4. see what Havock they made by those illegal proceedings, and in 1 *H.* 4. these very *Lords* were sentenced; and it was resolved by Act of *Parliament*, That no more *Appeals* should be any more in *Parliament*.

The

The other great point is this; There is nothing at all certainly disclosed to you by this *Plea*; therefore, there is nothing confessed by us, only the Fact that is well pleaded.

They say, They have pleaded it to be, *Secundum Legem & Consuetudinem Parliamenti*; but I say, They must disclose to you what is the *Law* and *Custom* of *Parliament*, in such Case; or you must take it upon you, upon your own knowledge, or you cannot give Judgment.

There are three things to be considered of the *Parliament*; the *Legislative part*, the *matters of Privilege*, and the *Judicial part*; For the two first, both *Houses* proceed only *Secundum Legem & Consuetudinem Parliamenti*; But for the *Judicial* part, they have in all times been guided by the *Statutes* and *Laws* of the *Land*; and have been ousted of a *Jurisdiction* in several Cases; as by the *Statute* of 4 *Edw.* 3. & 1 *H.* 4. And the *Lords*, in all *Writs of Error* and matters of *Judgment*, proceed, *Secundum Legem Terræ*, and so for *Life and Death*; And there is not one Law in *Westminster-Hall*, as to matters of Judgment, and another in the *Lords House*.

It

It is not sufficiently disclosed to you, that there is any such thing as an *Impeachment* depending there; 'tis only alledged that he was *Impeached*, and so much the *News-Books* told us; but to infer thence, that there was an *Impeachment* carried up, and lodged for the same *Treason*; is no consequence; And then 'tis alledged, *Quæ quidem Impetitio*, when no *Impeachment* is before set forth; but only that he was *Impeached* generally.

When a *Record* is pleaded in *Bar*, or in *Abatement*; the Crimes ought to be set out, to appear the same; so are all the *Presidents* of *Cok*'s *Entries* 53. *Holcroft* and *Burch*'s *Case*, and *Watt*'s and *Bray*'s *Case*, in 41 & 42 *Eliz. Cok*'s *Entries* 59. *Wroe* and *Wigg*'s *Case* 4 *Rep.* 45, &c. The *Record* must be set out, that the *Court* may judge upon it; and the *Record* must not be tryed *per Pais*, but by it self.

Mr *Wallop* was of opinion; that upon this *Averment*, the *Jury* may try the Fact; what a pretty Case would it be, that a *Jury* should judge upon the whole debates of the *House* of *Commons*; whether it be the same matter or No?

I did *demur* with all the care I could, to

to bring nothing of that in question; I take it there is nothing of that matter before you, concerning an *Impeachment* depending before the *Parliament*; but whatsoever was done, 'tis so imperfectly pleaded, that this Court cannot take any notice of it.

The *Solicitor General's Argument* was to this effect, *The Point in question is, whether this Plea be sufficient in Point of Law.*

They on the other side, argue the Plea to be good both in matter and form—— I will not now debate, whether *Magna Charta*, which Ordains that every Man shall be tryed by his *Peers*; and the *Statute 4 Edw.* 3. which says, that the *Lords* shall not be compelled, nor shall have power, to give *Judgment* upon a *Commoner*, have sufficiently secured the *Liberty* of the *Subject* from *Impeachments*; Nor is it the question before you, *whether you shall judge of any matter that is a Right or Priviledge of Parliament*; This is an *Indictment* for *Treason*. Neither will it be the *Question*, *whether an* Impeachment *depending in the* House of Lords *against a Commoner, by the* Commons, *will bar this* Court *of its* Jurisdiction.

They say, the *Commons* are the *grand Inquest* of the Nation, and They make their *Presentments* to the *Lords*; Now, when such a *Presentment* is made, 'tis worthy consideration, whether it be not a *Presentment* for the *King*; for an *Impeachment* does not conclude, as an *Appeal* does; but, *contra Ligeantiæ suæ debitum, & Coronam & dignitatem domini Regis*; so far 'tis the *King*'s *Suit*; In an *Impeachment*, the Witnesses for the *Prisoner* are not sworn, neither hath the *Prisoner* Counsel in matter of Fact, as he has in an *Appeal* at the *Subjects Suit*; The *King* may pardon part of the Sentence; It was so done in *Richard* the second's time; and in my *Lord Stafford*'s Case; but suppose it, that 'tis the *Suit* of the *People*, yet that cannot preclude the *King* from his *Suit*.

The Consequence which they urge, as such a dismal one, will be nothing; which is, If he should be acquitted here, he could not plead *autre foitz acquit*, and so would be twice brought in Jeopardy for the same Offence; for it is the same in all Cases of *Appeals*.

This is not like the Case of an *Appeal* for Murder, neither; for tho' it hath been

been used discretionarily to stay the *Suit* of the *King*, and prefer the *Subjects Suit*; it was because the *Subject* had the nearest concern; as the *Son* in the Death of the *Father*. The reason of that turns quite contrary here: in this Case that very reason will have the *King's Suit* to be preferred; for there is no *Treason* but against the *King*, he has the nearest concern, and the wrong is primarily and originally to himself.

Now, for the *Objection*, *that if you try this Man, upon the same reason you may try the* Lords in the Tower; Their Case is different, and the *Lords* removing the *Indictments* against them into *Parliament*, that no Prosecution might be upon them, seems to imply, that this *Trial* may be in this Case; for certainly they thought the *King's Court* might proceed, had not the *Indictments* been removed.

*As to the form of the Plea*; I conceive 'tis not a *formal Plea*.

We know here of no form of Pleading an *Indictment*, but what sets forth the *Indictment* particularly; 'tis so in all the Presidents I have seen; and the Law-Books resolve it must be so, as *Wyat* and *Wiggs* Case;

But they say, there is a difference be-

tween their Case, and those I put; for that 'tis the Course of *Parliament* to Impeach generally; so they could not have pleaded otherwise then the Case was; This Reason holds rather the other way; For if in any Case such a general way of pleading, with reference to the Record, were to be admitted, it were in Case of an *Indictment*; because there is no *Indictment*, but what particularly sets forth the *Felony*, and when produced, is capable of being applyed; but here, if the *Record* be brought in, 'twill no more ascertain the matter of the *Impeachment*, then the *Plea* does already.

And as the *Plea* is naught, for not setting out the *Record*; so is the *Averment* insufficient too; for tho he does aver, *That the Treason in the* Indictment *and the Treason for which he was* Impeached, *are one and the same, and not diverse, affirmatively and negatively*; yet he ought to have said; *That the Treason for which he is* Indicted, *and the Treason mentioned in the* Impeachment *is one and the same*; For if he was Impeached generally, without mention of particulars, it is impossible to be reduced to a certainty; so 'tis an Averment of a Fact, not capable to be tryed.

We do think upon the whole matter, without entring upon the debate, whether a particular *Impeachment*, lodged in the *House* of *Lords*, does preclude the *King* from his proceedings; We have a good *Case* upon this *Plea*, for that is not a Question necessary to be resolved, tho it be not granted by the *King* neither. But the *Question* is, whether this be a *formal Plea*, and whether here be sufficient matter set forth upon a *Record*, to bring the other matter into Question, and tye up the hands of the *Court*.

*Serjeant Jefferies* then said, I shall only offer one word to the *informality* of the *Plea*.

They cite the *Case* of the *Lords* in the *Tower*, as a Judgment for them, which seems to be against them, for by the *Lords* removing the *Indictments* into *Parliament*, They seem to be of Opinion, that notwithstanding they were *Impeached* before the *Lords*, yet there might have been proceedings upon those *Indictments*, had they not been removed; and there they remain to this day; nay further, to those *Impeachments* they have pleaded to Issue, which is ready for Tryal; but

In the Case at the Bar, there is only an Accusation, without any further proceedings thereupon.

I take not this to be such a dangerous Case, as the *Gentlemen of the other side* do pretend, for you to determine; For I am sure it will be better for the Court to answer, if ever they shall be required; That they have performed their Duty, and done Justice according to their Consciences, & Oathes; than ever to be afraid of any *Threats* or *Bugbeares* from the *Bar*.

For would not they by this manner of Pleading, put upon your *Lordships* a difficulty to judge; without any thing contained in the *Impeachment* to guide your Judgment; whether the Prisoner be *Impeached* for the same thing for which he is Indicted? May not the Treason intended in this *Impeachment* be Cliping or Coyning?

We rely upon the informality and uncertainty of the Pleading only; and meddle not with the Question, whether an *Impeachment* in the *House of Lords* superfedes an *Indictment* in the *King's Bench*; For We say, they have not Pleaded it so substantially, as to enable the Court to *Judge* upon the Question; and therefore

We

We pray your Judgment that the *Plea* may be over-ruled.

Sr *Francis Wythens* added, I say that this *Plea* cannot be good to ouſt this *Court* of *Juriſdiction*; The *Priſoner* ſhall by no means be admitted to averr the intention of the *Houſe* of *Commons*, before they have declared it themſelves; and therefore I conceive the Plea to be naught, for that reaſon; alſo for another, becauſe the *Court*, in this Caſe, by any thing expreſſed in the Plea, cannot diſcern or take notice, whether it be the ſame *Treaſon* or not.

*Treaſon* generally alledged in the *Impeachment*, is the *Genus*, and the *particular Treaſon* in the *Indictment*, is only a *Species*; And the *Averment* in the *Plea* is, That the *Genus* and the *Species* is the ſame; which is abſurd; and if allowed, tends to *hood-wink and blind the Court*, inſtead of making the matter plain for their *Judgment*. The *Arguments* being ended,

The *Chief Juſtice* ſaid; *We* never intended, when *We* aſſigned four *Council* to *Fitz-Harris*, that they all ſhould make *formal Arguments*, in one day; 'tis the firſt time that ever it was done; but, be-

cause 'tis in a *Case of Blood*; We were willing to hear all you could say: But I must tell you, you have started a great many things, that are not in the Case at all: *We have nothing to do here whether the* Commons, *at this day can* Impeach a Commoner *in the* House of Lords; *nor what the Jurisdiction of the* Lords *is*; *nor whether an* Impeachment (*when the Lords are possessed fully of it*) *does bar the bringing any Suit, or hinder the Proceeding in an* Inferiour Court; but here We have a Case, that rises upon the Pleadings, Whether your *Plea* be sufficient, to take away the *Jurisdiction* of the *Court*, as you have pleaded it; And you have heard what *Exceptions* have been made to the form, and to the matter of your *Pleading*; We ask you again, whether you are able to mend your *Pleading* in any thing; for the *Court* will not catch you, if you can amend it, either in matter or form; But if you abide by this *Plea*, then We think 'tis not reasonable, nor will be expected of us, in a matter of this Consequence, to give our Judgment concerning this *Plea*, presently.

All the *Cases* cited, concerning *Facts done*

*done in Parliament, and where they have endeavoured to have them examined here*, are nothing to the purpose, for We call none to question here for Words spoken, or Facts done in the *Commons House*, or in the *Lords*; which takes off the Instances you have given; but our *Question* is, *barely upon the Pleading of such an* Impeachment, whether it be *sufficient to fore-close the Hands of the* Court? And we will not precipitate in such a Case, but deliberate well upon it, before we give our *Judgment*. *Take back your Prisoner.*

Upon *Wednesday* May 11th, *Fitz-Harris* was again brought to the *Bar*, and the *Attorney* moved for *Judgment* on the *Plea*, and

The *Chief Justice* thus delivered the Opinion of the Court; Why, *Mr Fitz-Harris*, you have pleaded to the *Jurisdiction* of the *Court*, that there was an *Impeachment* against you, by the *Commons* before the *Lords*; and you do say, that that *Impeachment* is yet in force; and by way of *Averment*, that this *Treason* whereof you are Indicted, and that whereof you are *Impeached*, are one and the same *Treason*; And upon this, the

*Attorney*

*Attorney* for the *King* hath *demurred*, and you have joyned in *demurrer*; And we have heard the *Arguments* of your *Counsel*, and have considered of your Case among our selves; and upon full consideration and deliberation concerning it, and all thath hath been said by your *Counsel*; And upon conference with some other of the *Judges*; *We* are, three of us, of *Opinion*, that your *Plea* is not sufficient to bar this *Court* of its *Jurisdiction*; my *Brother Jones*, my *Brother Raymond*, and *my self*, are of Opinion, your *Plea* is insufficient; My *Brother Dolbeen* not being resolved, but *doubting* concerning it; And therefore, the *Court* does order and award, that you shall answer over to this *Treason*.

Thereupon he pleaded *Not guilty*, and the Court appointed his Tryal to be upon the first *Thursday* in the next *Term*.

Upon *Thursday* the 9th of *June* 1681.

*Fitz-Harris* being brought to the *King's Bench Bar*, the *Court* ordered the *Jury* to be called; and *Major Wildman* being returned upon the Jury, and appearing;

The *Attorney General* demanded whether

ther he were a *Freeholder* in *Middlesex*. He answered, I was a *Parliament Man*, and one that voted the *Impeachment* against this Person, and dare not serve upon this *Jury*; and he was set aside as not being a *Freeholder*.

*John Kent* being called, *said that he was no Freeholder, and the* Chief Justice *declared, that then he could not be sworn of the* Jury.

Then *Giles Shute*, *Nathaniel Grantham*, *Benjamine Dennis*, *Abraham Graves*, *Henry Jones*, and *Isaac Heath*, were set aside, as not being *Freeholders*; And the *Jury* sworn, were,

| | |
|---|---|
| *Tho. Johnson*, | *William Withers*, |
| *Lucy Knightley*, | *William Cleave*, |
| *Edward Wilford*, | *Tho. Goffe*. |
| *Alexander Hosey*, | *Ralph Far*, |
| *Martin James*, | *Samuel Freebody*, & |
| *John Vyner*, | *John Lockyer*. |

Then the *Indictment* was read, comprising several Treasonable passages, in a *Libel* called, *The true English-man speaking plain English*.

Then *Mr Heath* as Counsel for the *King*, opened the *Indictment*; and the

*Attorney*

*Attorney General* enlarged upon it, and called the Witneſſes.

*Mr Everard* teſtified, that he and *Fitz-Harris* became acquainted in the *French King's Service*; and *F. Harris* invited him to frame a *Pamphlet* to reflect upon the *King*; and gave him Heads and Inſtructions tending to it; and told him that he ſhould have forty Guineas, and a Monthly Penſion, which ſhould be ſome thouſand Crowns.

*Fitz-Harris* then demanded of *Everard*, Whether he was not put upon this to trapan others? which *Everard* anſwered, with this queſtion, Can you mention any Perſon that I was to *trapan*? But being again asked, Whether he was put upon it, to trapan the *Proteſtant Lords* and the *Houſe of Commons*? He ſaid, No, I was not. I was put upon it by none but *Fitz-Harris*, of whom I asked, what will be the uſe of this? and he ſaid, *We will deſperſe them, We know how*; And that he was to deliver it to the *French Ambaſſador's Confeſſor*, and it was to be drawn in the Name of the *Non-conformiſts*, to father it upon all the diſcontented party.

*Mr*

*Mr Smith* then gave evidence, that he was planted in a Closet in *Everard's* Chamber, and saw him and *F. Harris* through a hole; and heard *Everard* read a Seditious Paper to him, and enquire of him, what Heads he would have more, than were there; To which *Fitz-Harris* repiled, that he would have him represent the *King* as a *Papist*, and mentioned many other Trayterous things expressed in the *Libel*; And that when *Everard* told him those were Treasonable things, *Fitz Harris* said, *The more Treason the better.*

*Sr William Waller* was then sworn, and declared, that he was placed in a Room within *Everard's* Chamber, where through a crevass of the Door, and a Hole in the Hangings, he could see him and *Fitz-H.* and he heard *Fitz-H.* enquire of *Everard*, whether he had printed the Paper, according to his Instructions; and *Everard* produced two Papers, and gave him one; and after he had read a little in it, *Everard* asked whether it was drawn according to his Instructions; and he answered, It was exactly done; And that *Everard* said, This is a business of very dangerous consequence

sequence; what Reward shall I have for running so great a hazard; and he told him; I think I run an equal hazard with you, for you have a Paper under my Hand, which will render me liable to danger; and *Sr William* said, he saw *Fitz-H.* alter several passages with his Pen, and then, the Paper being produced, he declared it to be the same; And that *Fitz-H.* told *Everard*, that the *French Ambassador* was to Recompence him for his pains.

Then *Fitz-H.* demanded of *Sr William*, Whether that were the Paper for which he was Impeached, and *Sr William* answered, that it was, and that he read that Paper in the House. And *Mr Johnson*, Fore-man of the *Jury*, demanded whether *Fitz-H.* stood Impeached upon the same Treasons in the Indictment; and *Sr William* answered that he did, but being checkt by the *Attorney* and *Solicitor General*, he said, That as soon as he had communicated that Paper to the House, the House proceeded to the *Impeachment*.

Then the Libel was read, in these Words, viz.

The

*The true* English-man *speaking plain English, in a Letter from a Friend to a Friend.*

"I Thank you for the Character of a "Popish Successor which you sent me, "wherein our just Fears, and the grounds "of them are justly set out. But I am in greater fear of the present Possessor, why do "we frighten our selves about the Evil that "is to come, not looking to that which is "at hand? We would cut off the Budding "Weeds, and let the Poysonous Root lie "still; We would stop the Channel of "our Evils, and let the Fountain still run: "My meaning is this, can *Pylades* know "and Act all these Bloody Conspiracies, "and not impart them to his dear *Orestes*? "if *James* be Conscious and Guilty, *Charles* "is so too. Believe me, these two Brethren in Iniquity, they are in Confederacy with *Pope* and *French* to introduce "Popery and Arbitrary Government, as "all their Actions demonstrate; the Parliament, *Magna Charta*, and Liberty of "the Subjects are as heavy Yoaks which "they would cast off to be as absolute as "their Br. of *France*; and if this can be "proved to be their only aim and endea-

vour

" vour, why should not every True Brit-
" tain be a *Quaker* thus far? Let the *Eng-*
" *lish* rise, and move as one Man to self-
" defence, to open Action, and fling off
" their intollerable Riders. Blow the
" Trumpet, stand on your Guard, and
" withstand them as Bears and Tygers.
" And since there can be no trust given to
" this goodly couple of Popish Brethren,
" nor no relief expected from a Parlia-
" ment; Trust to your Swords in defence
" of your Lives, Laws, Religion and Pro-
" perties, like the stout Earl of Old, who
" told a King, that if he could not be de-
" fended by *Magna Charta*, he would be
" relieved by *Longa Spada*.

" Yet to convince the World that this
" *Scottish* Race is Corrupt Root & Branch,
" and Popish from the very beginning, be
" pleas'd to *consider* these *Reasons* following.
" The Grand-Father of these Men, *James*
" the *Scot*, was of no Religion at the bot-
" tom, but entred by a pretence of a Sham-
" Plot of the *Papists* against his Life, whilst
" really he collogued with the *Popish* Par-
" ty under-hand; His Mother, his Kin-
" dred and Companions were *French* and
" *Papists*, when came into *England*, he
" wrote to the Pope with great Submission,
" yet

"yet afterwards thinking it for his pur-
"pose to cajole the Parliament, and
"write against the *Pope* and *Cardinals*,
"he sends a *Scots* Bird to blind the Eyes
"of the *Vatican* Keeper with Money, and
"to steal his *Letters* from off the *Roman*
"*File*, and then he crows as boldly as an
"unsuspected Harlot for the *Protestant*
"*Religion* and *Interest*.

"That Man's Son *Charles* the First,
"held a secret Correspondency with the
"*Pope*, calling him his Dear and Holy
"*Father*, as is to be seen in his *Letters*
"recorded in *Rushworth's* Collections:
"Were not his *Wife* and *Courtiers Papists*?
"Did he not countenance and promote
"the Rebellion in *Ireland*? As the *Irish*
"Grandees & his very Commissions testi-
"fie and declare, was there not a *Popish*
"*Plot*, and an Universal *Conspiracy* of
"the *Papists* discovered to him and his
"Confessor *Laud*, and did they not pi-
"ously stifle it lest they should have dis-
"covered the Nakedness of their Mo-
"ther Church? Whilst that goodly
"*Protestant Prince* pretended to relieve
"the poor besieged *Protestants* at *Rochel*
"by his confident *Buckingham*, did he
"not hold Correspondency with the

"*French Cardinal* how to betray them "for a Sum of Money (which his ob- "ſtinacy with his Parliament made him "ſtand in need of.) But they who ſo ill "approved themſelves to be heads of the "*Proteſtant Church*, *Charles* and *Laud*, "did they not looſe their own Heads by "a manifeſt Judgment of God? And "was not the falſe Heart of their Emiſ- "ſary *Buckingham*, found out by an Aſ- "ſaſſins Knife?

"But to come nearer to our purpoſe, "theſe two goodly Imps of our days "are ſtark naught; arrived at the heigth "of Wickedneſs, and of profeſſed *Ar-* "*bitrarineſs* and *Popery*.

"As for *James*, he was a *Papiſt* whilſt "he had a Regiment in the *French*, and "afterwards in the *Spaniſh* Service be- "yond Seas. And as for *Charles*, he "was reported, e're he came into *Eng-* "*land*, to have been reconciled to the "*Church of Rome* in one of the *French* "*Kings* Country-Houſes; and ſince they "came in, how have they wheedled and "played faſt and looſe, in their profeſ- "ſion of Religion as Occaſion and their "Affairs required? Have they not all "along maintained ſecret Correſpon-

dency

" dency with *France* and *Rome*? As *Cole-*
" *man's* Letters may ſufficiently inſtruct
" ſuch who have not ſeen more ſecret
" Memoires.

" But let us come to Examine their
" Actions which are a better proof of
" their hearts, were not the *Duke's* Ser-
" vants and Confidents all *Papiſts*? Wit-
" neſs his *Talbots*, *Patricks* and other
" *Iriſh Teags*, were not the *Duke* and ſuch
" of his *Creatures* as were known *Papiſts*
" promoted to all publick Offices of truſt,
" both at *Sea* and *Land*? Witneſs *Bel-*
" *laſis* now a *Traytor* in the *Tower*; did
" not *James* by *Coleman*, *Throgmorton* and
" others, hold open Correſpondency
" with the *Pope* and *Cardinals*? and could
" *Charles* be ignorant of all this? Nay
" he lik'd all ſo well, that he hardly em-
" ployed any about him but *Papiſts*, as
" *Clifford* whom he made *Treaſurer*; or
" employed any abroad but Perſons of
" the ſame ſtamp, Witneſs *Godolphin*
" whom he ſent *Embaſſador* into *Spain*, as
" he did others elſewhere, what more
" obvious than that, though the *Duke's*
" Treachery againſt the *Kingdom* and *Pro-*
" *teſtant Religion* be fully made out, and
" the *People* and *Parliament* ſeek to bring

" him to a legal Tryal, yet *Charles* ob-
" structs Justice, and will not suffer it?
" How can this be, but that he is joyned
" in Will and Deed in all the *Duke's*
" Villanies, and that he is afraid to be
" discovered and found out to be a *Papist*,
" and a Betrayer of his *People* and the
" *Protestant Religion*? If he was heartily
" concerned for our *Religion*, would he
" not oppose a *Popish Successor*, who will
" Infallibly overthrow it? Can there be
" any thing more evident than that he
" continues the *Duke's* Adherents, and
" those who were advanced by him, in
" all Offices of Trush? And hath he not
" turn'd out of his Council the most Zea-
" lous *Protestants*, such as *Shaftesbury*,
" *Essex* and others, and introduced in
" their Rooms other meer Tools, or
" those that are *Popishly* and *Arbitrarily*
" affected? Hath he not modell'd all the
" Sheriffs and Justices throughout *Eng-*
" *land* in subserviency to a *Popish* Design?
" Was not Sir *William Waller* and
" Dr *Chamberlain*, and divers others
" turn'd out of the Commission in and
" about *London*, meerly for being Zea-
" lous Prosecutors of Priests and *Papists*?
" Doth not *Charles* all he can to hinder

" the further detection of the *Popish Plot*?
" And doth he not to his utmost dis-
" countenance the Discoverers of it, and
" suffer them to want Bread? And doth
" he not in the mean time plentifully en-
" courage and reward *Fitz-Gerald* and all
" the Sham-Plotters? Whereas *Danger-*
" *field* had 8*l*. a week whilst a Forger of
" *Plots* against the *Protestants*, he is cast
" off with scorn, and in danger of his
" Life since he laid open the *Popish En-*
" *gineers*. Is not *Charles* so much in love
" with his *Popish Irish Rebels* (therein
" treading in his Fathers steps) that he
" promotes *Montgarret*, *Carlingford*,
" *Fitz-Patrick* and others, who were the
" Heads of the *Rebellion*, to Honours and
" Preferment; tho' *Charles* took the Co-
" venant and a Coronation Oath to pre-
" serve the *Protestant Religion*, yet hath
" he not palpably broken them? He
" made large promises and protestations
" at *Breda* for the allowing a perpetual
" Liberty of Conscience to *Non-conform-*
" *ing Protestants*, but he soon forgot them
" all. To what end was the Act which
" was made soon after his Restoration,
" prohibiting any to call him *Papist*, or
" to say he was *Popishly* enclined, and

" render such as should offend, Guilty of
" a *Premunire*, but to stop the Peoples
" Mouthes when ever he should Act any
" thing in Favour of *Popery* as he was
" then resolved to do?

" Is it not manifest therefore, that
" *Scotch* Oaths, *Breda* Promises, *Pro-*
" *testant Profession*, *Liberty of Conscience*,
" War with *France*, saving of *Flanders*
" is all in Jest to delude *Protestant Sub-*
" *jects*? Is it not apparent that breaking
" of Leagues, *Dutch* War, *Smirna Fleet*,
" *French* measures to favour their Con-
" quests, loss of Ships, War in Christen-
" dom, Blood of *Protestants*, reprieving
" of *Popish Traytors*, is all in earnest,
" and done in favour of *Popery*? And
" are not his fair Speeches, his true *Pro-*
" *testant* Love to *Parliaments*, just Rights,
" and *English* Liberties, his pretended
" Ignorance of the *Plot*, and his Hang-
" ing of Traytors to serve a turn, but in
" meer jest? Are not his great Debauche-
" ries, his Whoring Courtiers, *Popish*
" Councils, Cheating Rogues, Hellish
" Plottings, his saving of Traytors, his
" *French* Pensioners, his Nests of Whores
" and Swarms of Bastards, his Macks,
" his Cut-throats, his Horrid Murderers,

his

" his Burning of *London* and the Pro-
" vost's House too, his Sham-Plotting,
" his suborn'd Villains, his *Popish* Offi-
" cers by Sea and Land, his Struglings
" for a *Popish* Successor, his agreements
" with *France*, his frequent Dissolutions
" of *Parliaments*, his buying of Voices,
" his false returns, all of them designs to
" ruine us in good earnest, and in fa-
" vour of Arbitrary Government? And
" is it not in order to this Blessed end
" that you see none Countenanced by
" *Charles* and *James*, but Church *Papists*,
" betraying Bishops, Tantivy Abhor-
" rers, barking Towzers, *Popish* Scribblers
" to deceive the People and fix the *Popish*
" Successors Illegal Title? Are not
" *Jesuits* Counsels, *French* Assistance to
" conquer *Ireland*, subdue *Scotland*, winn
" *Flanders*, beat the *Dutch*, get their
" Shipping, be Masters of the Seas?
" And are not facing a Rebellion, the
" letting the Plot go on, the endeavour-
" ing to retrieve the *Popish* Cause by get-
" ting a *Popish* pentionary, abhorring
" *Parliaments*, who shall betray their
" Country, enslave posterity and destroy
" themselves at last, means only to save
" a *Popish* Trayterous Successor, and a

"present *Popish* Possessor? *James* and "*Charles* are Brethren in Iniquity, cor-"rupt both in Root and Branch, and "who study to enslave *England* to a "*French* and *Romish* Yoke, is not all this "plain? Have you not Eyes, Sense or "Feeling? Where is the Old *English* "Noble Spirit? Are you become *French* "Asses to suffer any load to be laid up-"on you? And therefore if you can get "no remedy from this next *Parliament* "(as certainly you will not) and if "*Charles* doth not repent and comply "with it, then up all as one Man. O brave "*English* Men, look to your own defence "e're it be too late; rouze up your "Spirits, remember your Predecessors, "remember how that the asserting of "their liberties, justified both by Succes "and Law, the War of the Barons a-"gainst wicked Councellours, who mis-"led the *King*. And will you now let "that go, which cost them so dear? How "many oppressing *Kings* have been de-"posed in this Nation, as appears in "Records referr'd unto in that worthy "*Parsons* History of the Succession; "were not *Rich.* 2d. And *Hen.* 6. both "laid aside, not to mention others, & was

there

"there ever such a *King* as this of ours? "was not *King John* deposed for going a- "bout to imbrace the *Mahometan* Reli- "gion, and for entring into a League "with the *King* of *Morocco* to that pur- "pose? Though *Mahometanism* and the "*King* of *Morocco*, were no such Ene- "mies to our Rights and Liberties as "*Popery* and the *French King* are. Is it "not time then that all should be ready? "Let the City of *London* stand by the "*Parliament* for the maintaining of their "Liberties and Religion in an extream "way, if Parliamentary ways be not "consented unto by the *King*, let the "Counties be ready to enter into an As- "sociation, as the County of *York* did in "*Henry* 6th time.

Sr *Philip Lloyd* and Mr *Bridgman*, Clerks of the *Council* then testified; that *Fitz-Harris* acknowledged the Paper of Instructions given to *Everard*, to be his own hand-writing.

The *Prisoner* then called his *Witnesses*; and Dr *Otes* testified, that after the Busi- ness was talked abroad, he discoursed *Everard* about the *Libel*; and asked him what the design of it was; *and he told him*

*him it was to be Printed, and sent by the Penny Post, to the* Protesting Lords, *and* leading Men *of the* Commons; *and they were to be taken up, as soon as they had it, and to have it found about them*; And that *Everard* told him, the *Court* had a hand in it; and the *King* had given *Fitz-Harris* Money already, and would give him more if it had succes.

*Sheriff Cornish* was then called, and the *Prisoner* demanded of him, what the *King* said to him, when he came to his *Majesty* from him from *New-Gate*; whether the *King* did say *Fitz-Harris* was employed by him, and received any Money, and what for?

The *Sheriff* answered; when I gave his *Majesty* an account that I found the *Prisoner* disposed to make a Discovery, he was pleased to tell me, he had often had him upon Examination, and could make nothing at all of what he did say, or discover to them, and that he had for near three Months before acquainted him, that he was in pursuit of a *Plot*, *and the* King *did say, That in as much as he made great Protestations of Zeal for his Service, he did Countenance and give him some Money.*

Mr

Mr *Attorney*, (ſeeming to be under a ſurprize at this Evidence) demanded of the *Sheriff*, whether the *King* ever declared that he ſaw *Eliz. Harris* in his Life, or that he ever was in his Preſence, Mr *Sheriff* anſwered, yes.

The *Attorney* ſaid, Ay! but did the *King* ſay he ever ſaw him, before he was Arreſted for this Fact?

The *Sheriff* replyed, yes, his *Majeſty* ſaid he came to him about three Months before, and pretended he would diſcover a great *Plot* to him.

Then the *Priſoner* called *Colonel Manſel*, and demanded what he heard Sr *William Waller* ſay, after the Diſcovery was made.

*Colonel Manſel* teſtified, that he heard Sr *W. Waller* ſay; that when he had acquainted the *King* with this buſineſs, he told him, he had done a great piece of Service, and gave him thanks; but that Sr *William* was no ſooner gone, but two worthy *Gentlemen* told him, that the *King* ſaid, he had broken all his meaſures, and he would have him taken off one way or another; And *Colonel Manſel* added that Sr *William* ſaid, *That the deſign was againſt the Proteſtant* Lords *and the Proteſtant* Party.

*Serjeant*

Serjeant *Maynard*, upon hearing this, declared, that he did not doubt, that it was against the *Protestant* Party.

Mr *Elwes* being called by the *Prisoner*, said, that Sr *W. Waller* told him and others, That the *King* gave him particular thanks for detecting *Fitz-Harris*; but that he was told by two *Gentlemen* of undoubted Credit, that heard the *King* speak it; that his *Majesty* was in extream Passion, and said, *He would give any thing to take him out of the World, that he was an insufferable vexation to him, and that he had broken all his measures*; and that Sr *William* said the same at *Oxford*, in the presence of Sr *Philip Harcourt*, and of my *Lord Radnor*'s Son, Mr *Roberts*; and did also say, it was a design, to make these Papers Evidences of *Rebellion*; and that this was the Counterpart of *Dangerfield*'s *Plot*; and that he hoped he would not deny it, if he be asked, here he is.

Sheriff *Bethel* then testified, that *Everard* told him, he wrote the *Libel*, and that before *Everard* knew him, or heard him speak a word in his days, he put in an Information of Treason against him, at the instigation of his Mortal Enemy;

nemy; and it was so groundless, that tho' it was given in three years ago, he never heard a word of it till Friday last.

Mrs *Wall* was then called by the Prisoner, he demanded of her, whether he had not conveyed some *Libels* and *Treasonable* Papers to the *King* by her means, and received Money upon that account? but *she* would not acknowledge it.

He then asked her, whether it was not about *Christmas* was twelve Month, that he gave her the *Libel* about the *King* and her *Lady*; and the *King* thanked him extreamly, and he had 250 *l.* given him? and he said to her, Come Mrs *Wall*, don't think to trick me out of my Life, I can you deny that I had the 250 *l.* speak, had I the 250 *l.*

Mrs *Wall* answer'd, That was not the Question you ask'd me at first, There was 250 *l.* I think it was 200, or 150, or 250 *l.* you know it was not for any *Libel* ——— you once told me, you could bring in People to the *King* and *Duke*'s Interest, that were very considerable, and the Secretary of *State* desired to know who they were, and you named one *Thomas Merry* and my *Lord Howard*

of

of *Escrick*; and the *Secretary* desired me to get him in if I could.

*Fitz-Harris* then demanded of her, whether he did not come to her the *Wednesday* before he was taken, and tell her he desired to speak with the *King*; and that he had a *Libel* to present to him.

Mrs *Wall* answered, No, it was the *Thursday*; you desired me to bring you to the *Speech* of the *King*, which was a thing you never desired before; and you said, you believed you could say something to him, that might do him service, but *she* denyed that he said any thing to her of the *Libel*.

Upon further questions put to her, she said that *Fitz-Harris* was never admitted to the *King*, and that the *King* never took notice of him, or spoke to him, by her means; and that the Money was paid for the bringing of my *Lord Howard*, who came first to her two years ago; and whether it be a year and an half since his *Lordship* met with the *King*, she said she could not tell.

Mr *Cowling* declared, That Mrs *Wall* told him, that the second or third night before he was taken, *Fitz-Harris* came

came to her, to bring him to the *King*; but she asked him why he did not go to one of the *Secretaries*, and he said that he could not do that without being taken notice of, and that she then said to him, Write down your Business, and I will carry it to the *King*; and he said, No, I will not do that; and that she thereupon replyed, I must then beg your pardon, if I don't bring you to the *King*.

My Lord *Howard* then testified, That about ten or fourteen days before the Sitting of the *Parliament* in *October* last; *Fitz-H.* applyed to him in the *King's* name, to have him wait upon the *King*, but that he declined it, and that he then prest his *Lordship* to wait upon the *Dutchess* of *Portsmouth*, and when he came to her, he found the *King* there; his *Lordship* added, that if the 250 *l.* were given for bringing him thither, he feared the *King* did not think he deserved it; That about ten days after he saw the *King* again by the means of *Fitz-H.* and that when the *Parliament* was ended, he waited again upon the *Dutchess*, and then requested her to represent *Fitz-H.* his condition to the *King*.

His

His *Lordship* further acknowledged (upon the Question put to him by *P. H.*) that he came to him the night before my *Lord Strafford* was Condemned, and told him, the *King* desired his *Lordship* would go the next day, and give his Vote for my *Lord Stafford*, and that he thereupon answered him, seeing there is so great an account put upon it, If I had but breath enough to pronounce his Doom, he shall die.

Here, Dr *Otes* desired leave to go away, saying, the Crowd was so great he could not stand; upon which, Mr *Attorney* scoffingly said, my *Lord*, that may be part of the *Popish Plot* to keep Dr *Otes* here, to kill him in the Crowd.

The *Prisoner* then demanded of the *Dutchess* of *Portsmouth's* Porter, how long it was since he paid him the Money from my *Lady Portsmouth*, but he said he could not tell, it was so long.

The *Earl of Arran* was then called by the *Prisoner*, and acknowledged upon his questions, that he did shew him a *Libel*, (perhaps it was this) the day he was taken, and his *Lordship* told him, he would do himself a mischief one time or other by meddling with such Papers; and that they

they drank a Bottle or two of Wine and parted, and that as soon as his *Lordship* came home, he heard *Fitz-H.* was taken.

My *Lord Conway* and *Secretary Jenkins* denied that the *King* did own that he had employed *Fitz-H.* but my *Lord C.* acknowledged, that he had heard the *King* say, *he did formerly employ him in some* * *trifling things*; and that he had got Money of him; and that, his *Lordship* said, was for my *Lord Howard*'s Business; He added, that the *King* never spoke with him till after he was taken.

* Making a Protestant Plot, or so.

The *Dutchess* of *Portsmouth* then appeared, and *Fitz-H.* asked her, Whether he was not employed to bring Papers to the *King*, and amongst the rest the *Impeachment* against her *Grace*; and he said that thereupon she told him, that it was a great piece of service to bring those sort of Papers; and that he told her he knew one Mr *Everard*, who knew all the *Intrignes* and *Clubs* in the *City*; and could tell all the designs of my *Lord* of *Shaftesbury*, and all that Party; and her *Grace* encouraged him to go on, and

by her means he came to speak with the *King* about it.

The *Durchess* answered, I have nothing to say to Mr *Fitz-H.* nor was concerned in any sort of Business with him; he desired me to give a Petition to the *King*, to get his Estate in *Ireland*, and I spoke three or four times to the *King* about it, and he had the Money for Charity.

Hereupon *Fitz-H.* said, I am sorry your *Grace* is so much under Mrs *Wall*'s Influence; and then addressing himself to the *Court* said; I will tell you what I know, since my *Witnesses* will not; I shall rely upon the Consciences of the *Jury* for the Issue; Tho' my *Lady Portsmouth*, *Mrs Wall* and the rest say, that I was not employed, nor recieved Money for secret Services, yet 'tis very well known I did so; As to *Everard*, he told me, he was well acquainted with my *Lord Shaftesbury*, and my *Lord Howard*, and he knew their *Intrigues* in several *Clubs* in the *City*; I humoured him in his discourse, and discoursed him to reduce the Paper he accuses me of, under some heads; And I no sooner had the Paper, but I came to *White-Hall* with it; and

was

was adviſed to go to my *Lord Clarendon*, or Mr *Hide*, and ſhew'd it to a *Gentleman* who was to give it to my *Lord Clarendon*, but before he could get to him, I was taken; What I did was with deſign to ſerve the *King*, according as I was employed, tho' both the *Secretaries* will not declare it; Theſe are great Perſons that I have to do with, and where great State-matters are at the bottom, 'tis hard to make them tell any thing, but what is for their Advantage; and ſo I am left in a ſad Condition.

If the *Jury* Convict me, They overthrow the Law and Courſe of *Parliaments*; Whereas if they bring me in Not Guilty, my *Impeachment* ſtands good ſtill, and I am liable to anſwer it before the *Parliament*; I hope you will conſider the Perſons I have had to deal with, and that it cannot be made ſo plain, as in matters wherein We deal with common Perſons. I deſire notice may be taken that Sr *William Waller* declares, that for this very thing, I was *Impeached* by the *Houſe* of *Commons*.

Then the *Solicitor General* and Sr *George Jeffryes* ſummed up the Evidence, and the *Chief Juſtice* directed the

*Jury*, his *Lordship*, and the three other *Judges*, *Jones*, *Dolben* and *Raymond*, telling them, that they were ſworn to the Point, whether *Fitz. H.* were guilty of the Treaſon or not; but that it lay not before the *Jury*, whether the *Court* have Authority to try him; that was a queſtion proper for the *Judges* determination, and they had determined it.

Thereupon, the *Jury* found him *Guilty*; Before the Sentence was paſſed upon him, he ſaid, that he thought it would be prejudicial to the *Kings* Service, that Sentence ſhould paſs; before he had made an end of the *Evidence* he had given in againſt my *Lord Howard*; but the *Chief Juſtice* ſaid, They could take no notice of any thing of that nature, and he was Sentenced to dye as a Traytor, which was Executed the 1*ſt.* of *July*, 1681.

An

## An Abſtract of the Examination of *Edward Fitz-Harris*, relating to the Popiſh Plot, taken the 10th of *March*, 1680. by Sr *Robert Clayton* and Sr *George Treby*.

THe *Examinant ſaith that he was born in* Ireland, *and was bred, and is a* Roman Catholick; *That he had a* Commiſſion, *and Raiſed a* Company of Foot *in* Ireland *for the* French King's Service, *and Conducted them into* France.

*That in* 1672, *going to take his leave of* Father Gough *an* Engliſh Prieſt *at* Paris, *he told him, within this two years, you will ſee the* Catholick Religion *Eſtabliſhed in* England *as it is in* France; *the* Examinant *asking how that could be, the* King *being a* Proteſtant, *he anſwered, If the* King *would not comply, there was Order taken, and things ſo laid; that he ſhould be taken off or killed*; *That the* Duke of York *was a* Catholick, *and in his Reign there would be no difficulty of doing it*; *That the* Father *then told him, that the* Declaration

on of Indulgence, *was for the Introducing the* Catholick Religion, *and that to the same end, the* War *was made against* Holland, *it being a* Nest of Hereticks; *and that* Madam *came over to* Dover *upon this Design.*

*That the* Examinant, *about* February, 1672, *had a* Lieutenants Commission *in* Captain Sidenham's Company, *in the* Duke *of* Albermarl's Regiment, *in the* Black-Heath Army; *and that he knew many of the* Officers *to be* Roman Catholicks; *and that the Act passing to disable* Roman Catholicks, *he and others of them were forced to quit their* Commands; *that the common opinion amongst them was, for the setling the* Roman Catholick Religion *in* Engd. *but that the measures being broken, by means of the Peace with* Holland, *and the* Duke *of* York's, *and other* Catholick Officers *quitting all* Commands, *and the* King *failing in his expectations from them, the* Roman Catholicks *came to a Resolution to Destroy the* King, *as* Father Parry, Confessor *to the* Portuguieze Ambassador *told the* Examinant *in* 1673; *who put this Confidence in him being his* Confessor; *and that the same* Father *repeated the same discourse to him with more assurance in* 1678.

*ad-*

adding then, that the Business then was now near, and he should soon see it done. That about April 1679. the Duke of Modena's Envoy having sworn him to Secrecy, told him, That if he would undertake the Killing the King, he should have 10000 l. which he refusing, the Envoy said, The Dutchess of Mazarine understands Poysoning as well as her Sister, and a little Viol when the King comes there will do it; and that upon the King's Death, the Army in Flanders and Parts adjacent to France, was to come into England to destroy the Protestant Party, and that after that, there should be no Parliaments, and that the Duke of York was privy to all these designs.

That about April 1680. Kelly the Priest whom he had known above 12. Years, and had some times Confessed him, owned to him at Calis, that he was concerned in the Murder of Sr Edmund-Bury Godfrey, and that the same was done as Prance had related it.

That the Examinant had been six or seven Years acquainted Monsieur de Puy, Servant to the Duke of York, and that he told him soon after the Murder of Sr Edmund-Bury Godfrey, That that Murder was consulted at Windsor, and about that

time

time said, that the Duke was very desirous to come to the Crown, the King being uncertain, and not keeping touch with them; and that De Puy said, there was a necessity of taking off the King, and that it would be soon done; That the Duke of York possessing part of the Examinant's Fathers Estate in Ireland, the Examinant being acquainted with Father Bedingfeild, asked him, how he could give Absolution to the Duke, till he had made Restitution? to which the Father said, that every Penitent was supposed to know his own Sins, and to declare them to his Confessor; to which the Examinant replying with warmth, But since you know it, you ought to take notice thereof; the Father answered, be not angry, for e're it be long you may be in a better condition.

That in March 1688. he met Father Patrick at Paris, and talking of a Rupture that might be between England and France, the Father said, that the French intended in such Case, to send Marshall Bellfonds into Ireland, with 10000 Foot, and 2000 Horse, and Arms and Ammunition for 30000 Men to be raised there; and the Father promised the Examinant a Regiment of the Men to be so Raised, and the design

was

*was to restore that* Kingdom *to its former Owners in Subjection to* France.

*That* Father Patrick *desired him to send him all the* Libels *that came out in* London, *and said, that* Libelling *the* King *was a thing necessary in order to distaste and make him jealous of his People; that the* Examinant *knew* Mr Everard *at* Paris *in* 1665, *and hath since encreased his acquaintance with him; and that the Opinion of* Father Patrick *about* Libelling *the* King, *incouraged the* Examinant *to confer with* Everard, *as to the* Libel *lately Written by* Everard.

It was most evident from the demeanour of *Fitz-Harris* (from the first to the last, after his apprehension) that he was ready to say, deny, affirm, or do any thing to save his Life.

*Mrs Fitz-Harris* (his Widow) upon the 15th of *August*, 1681. deposed, that her *Husband*, a little before his Execution, told her what great offers were made him at first, to have charged the *Libel* upon the *Earl* of *Shaftesbury*, and my *Lord Howard*; and *that he advised her to do it, as the only means to save his Life*, tho' he protested at the same time, they were wholly innocent; and that she was

assured that she should have what Money she pleased, if she would accuse those *Lords* of the *Libel*.

Nay, *Fitz-H.* himself, the very Night before his Execution, wrote a Paper which he ordered to be delivered to his Wife, in order to prevent the spilling innocent Blood; informing her, by whom he was advised to accuse those *Lords*, and others of the *Libel*, and of having put him upon the discovery of the *Popish Plot*; and that he had the promise of a Pardon to prevail upon him to do it; but finding that he was deluded, he declared, as before *God*, that they were innocent, and that what he had deposed against the *Papists* was true, and *that he had been only too sparing, in accusing great People among them.*

It is observable, that for about fourteen dayes, between the time of the *Condemnation* and *Execution* of *Fitz-Harris*, the poor wretch was wholly under the management of *Dr Hawkins* of the *Tower*; in which time, the *Doctor* having held several Consults with some at *Windsor*; there was modelled a Paper, stuff'd with abominable Malice and Falshood, to serve the wicked Designe of that day, which

the *Doctor* after his Death, emitted to the World, under the Title of the *Confession of Fitz-Harris*, and therein he is made to declare abundance of extravagant Falshoods, in particular.

*That the Treason of the Libel came from the Lord Howard*; But his Conscience could not but witness, that he had at several times complained to *Sheriff Bethel*, and *Sheriff Cornish*; that he had been pressed to accuse the *Lord Howard*, and also the *Earl of Shaftesbury*, of the Libel.

Then the *Sham Confession* proceeds to a *Protestant Plot* (viz.) *that the* Lord Howard *told him of a design to seize upon the King, to carry him into the City, and there detain him, till he had yielded to their desires; and that himself and* Haynes *were privy to the design, and had several Meetings with the Lord* Howard.

A strange Tale of a *Protestant Plot*, between two *Irish Papists* and a *Protestant English Lord*.

In the next place, this *Mock-Confession* is to perswade the World, that the *Protestant Magistrates* of *London*, did endeavour to suborn him to make a Confession that might confirm a *Popish Plot*.

It declares, *That in* Newgate *the* Sheriffs,

riffs, Bethel and Goodfish *came to him, with a Token from the* Lord Howard, *and told him nothing would save his Life, but discovering the* Popish Plot; and *greatly encouraged him to declare, that he believed so much of the* Plot, *as amounted to the introducing the* Roman Catholicks; *or to criminate the* Queen, his Royal Highness; *or to make so much as a plausible Story to confirm the* Plot.

Besides, That as it hath been heretofore observed, and is most undoubtedly true; that Neither of the *Sheriffs* ever spake privately with *Fitz-H.* until he had been thrice examined by the *Secretaries of State*, and sworn to the substance of his Examination, taken by *Sr Robert Clayton* and *Sr George Treby*; So, this idle Tale in it self, could never deserve the least credit, in that it made the *Sheriffs* so foolish and vain, as to think a Declaration from such a Wretch as *Fitz-H.* of his belief of the *Popish Plot*, to have been of great value, and that it was worth a high Reward, for him to have invented a plausible story, to confirm the Plot, after the belief thereof, had been confirmed by many *Proclamations*, by the *Votes* of four *Parliaments*, and the *Condemnation* and *Execution* of several of the *Plotters*.

Fur-

Further, *Dr Hawkins* his Paper brings in *Fitz-H.* charging it upon the *Sheriffs*; that they extorted from him false Confessions about the *Popish Plot*; and it makes him to speak thus; *I finding my self in* Newgate *fettered, Moneyless and Friendless, and I could see no other refuge for my Life, but complying with them* (the Sheriffs) *so, to save my Life I did comply.*

But as soon as the *Doctor* had published this Sham, the falshood thereof was detected, and the World rightly informed in the matter; that *Fitz-H. was never fettered, or put in Irons*; but was treated with all imaginable civility, for which he thanked the *Sheriffs*, even with his dying Breath.

The *Doctor's* impudent *Libel* then fell upon *Sr Robert Clayton* and Sr *George Treby*; and insinuates, that they would have induced *Fitz-Harris* to say more than was true, and says, that what he deposed before them about *Father Patrick*, was forced out of him, and was not true.

*F. H.* himself well knew, that Sr *Robert Clayton* and Sr *George Treby*, came to take his Confession, upon his earnest importunity; and that after he had been thrice examined by the *Secretaries* and

*Attorney General*, and he had ſworn before them all the matters in ſubſtance, contained in the Examination by Sr. *R. C.* and Sr *G. T.* except that one paſſage about *de Puy*; and when that Examination was read to the Houſe of *Commons*, at *Oxford*; *Secretary Jenkins* acknowledged, that he had confeſſed the ſame to the *Lord Conway*, the *Attorney General*, and himſelf, except that about *de Puy*; yet, the *Contriver* of the *Sham Retractation*, took no care to retract, or excuſe his Swearing the ſame matters, before the *Secretaries* and *Mr Attorney*; becauſe, *Reaſon of State* did at that day require, that not They, but the *City Magiſtrates* muſt be expoſed.

Then, the impudence of Hell is aſſumed, to bring in *Sr George Treby*, inviting *Fitz-H.* to accuſe the *Earl of Danby*, and the *Popiſh Lords* in the *Tower*, by ſpeaking thus; *do but you ſay it, We have have thoſe that will ſwear it.*

Had they been provided with falſe Witneſſes, and had they had ſuch an accurſed deſign; There was no need of *Fitz-H.* his ſaying any thing: Neither the falſe Suggeſtions, nor the Perjuries, could have gained any weight or credit from

from the Authority of *Fitz-H.* by his saying what they were to Swear.

To conclude, there are Persons who can unriddle this whole Mystery, & pull off the Disguises and Vizors, wherewith this affair is even to this day obscured; and therefore, I have made this Recapitulation of the fore-going particulars, to incite those who are better able, to oblige the World, with a more full knowledge of the vile Practices, with this poor, deluded, timerous Wretch; and then it may be evident, that the *Doctor* gave him expectation, if not assurance of Life, to the very last Moment that he drew breath.

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## Remarks upon the Tryal of Mrs *Elizabeth Gaunt* at the *Old Bayly, London*, upon the 19th day of *October*, 1685.

WEre my Pen qualified to represent the due Character of this *Excellent Woman*, it would be readily granted, that she stood most deservedly

ly entitled to an eternal Monument of honour, in the hearts of all sincere Lovers of the *Reformed Religion*. All true *Christians* (tho' in some things differing in perswasion with her) found in her a universal Charity and sincere Friendship, as is well known to many here, and also to a Multitude of the *Scotch Nation*, *Ministers* and others; who, for Conscience sake, were thrust into Exile by *Prelatick Rage*; These found her a most refreshing Refuge; She dedicated her self with unwearied industry to provide for their supply and support; and therein (I do incline to think) she outstripped every individual Person (if not the whole Body of *Protestants*) in this great *City*? Hereby she became exposed to the implacable fury of the *bloody Papists*, and those *blind Tools*, who co-operated to promote their accursed designs; and so there appeared little difficulty to procure a *Jury* (as there were well prepared *Judges*) to make her a *Sacrifice* (as a *Traytor*) to *Holy Church*.

Upon *Monday* the 19th day of *October* 1685, Mrs *Gaunt* was arraigned, upon an *Indictment*, to this effect, (viz.)

*That she intending to disturb the Peace and Tranquility of the Kingdom, and to stir up* Rebellion *against the* King, *and to subvert his Government, and depose and put him to death; for bringing her Traytorous purposes to pass, she, well knowing* James Burton *to be a* Traytor, *did secretly and Trayterously entertain and conceal him, and did give him Meat, Drink, and* 5 *l. in Money, for his Maintenance and Sustenance.*

She having pleaded Not guilty, the following Jury was sworn.

| | |
|---|---|
| *Tho. Rawlinson,* | *William Cloudesley,* |
| *Tho. Langham,* | *Richard Holford,* |
| *Ambrose Isted,* | *William Longboate,* |
| *Tho. Pendleton,* | *Steven Colman,* |
| *John Grice,* | *Robert Clavel* and |
| *Tho. Oneby,* | *William Long.* |

Then *Mr. Attorney General* said, The *Prisoner* is indicted for harbouring *Burton*, a great *Traytor*, and procuring a way for his escape beyond Sea, and giving him 5*l.* to bear his Charges; *She* and her *Husband* were the great *Brokers* for carrying over such *Traytors*, as *my Lord Shaftesbury* and others; He then called *James Burton*, and demanded an account of him, whether he were engaged in the

the matter of the *Rye-House*; and how *Mrs Gaunt* harboured him?

*Burton* certified, that *Keeling* brought him and *Barber*, and *Thompson* into the company of *Rumbold*; That upon *Keeling*'s discovery, he was put into the *Proclamation* for being at that Meeting, and absconded about two Moneths, and then *Mrs Gaunt* came to enquire of his Wife for him, who brought her to him; and she told him, that there were some Persons about to make an escape, and *she* would have him go along with them; and sent him (with *Rumbold*) to *Rochford-Hundred* in *Essex*, to take Ship, but not liking the Vessel, and the Weather being bad, they returned to *London*.

It looks as tho' *Keeling* had been employed at *White-hall* to make, as well as to discover this Plot, for of the very small number accused of it, We have him here, drawing in three at once.

That many Moneths afterwards, *Mrs Gaunt* came and gave him 5 *l.* and sent him in a Boat to *Gravesend*; from whence he went in a Vessel to *Amsterdam*.

*Mary Gilbert* (*Burton*'s Daughter) was sworn, and said, that she met *Mrs Gaunt* with her Father in *Houndsditch*, and

they

they went to a House without *Bishopsgate*, and that she there saw him with a Man that had but one Eye, and was full of Pock-holes.

*Burton*'s Wife then testified, that Mrs *Gaunt* came to enquire where her Husband was, and she told her he was at her Daughter's; and Mrs *Gaunt* told her, That if she were willing her Husband should go away, she would take care therein; and Mrs *Gaunt* appointed them to meet without *Bishopsgate*.

The *Lord Chief Justice Jones* and *Judge Wythens*, and also the *King*'s Counsel (viz.) the *Attorney*, the *Solicitor General*, *Mr North*, and *Crispe* the *Common Serjeant*, rack'd their Inventions to draw *Burton* and his Wife, to charge *Mrs Gaunt* with the knowledge of his being in a *Plot*, or in the *Proclamation*; but nothing of that could be made out; Nor is here any sort of proof, that *Mrs Gaunt* harboured this ungrateful *Wretch*; or that she gave him either Meat or Drink, as the *Indictment* charges her; And it must be further noted, that here is only the single Testimony of *Burton*; of her giving him Money, and sending him away; The Evidence being short in this,

The

The *Chief Justice* fell upon the Prisoner with ensnaring Questions; demanding of her, What was the reason she would send *Burton* away? whether she gave him Money? Whether she heard that his Name was in the *Proclamation*, &c?

Here *Captain Richardson* officiously interposed, saying, She says she is not come here, to tell your *Lordships* what she did.

The *Chief Justice* then sum'd up the Evidence thus, *Burton* sayes this *Woman* was very solicitous to send him beyond Sea; That her *Husband* being concerned in the *Plot*, and she (as *Burton* believes) knowing that he could make some discovery concerning her *Husband*, endeavoured to convey him away; It is true, there is not direct proof, that there was any particular mention that *Burton* was in the *Proclamation*; but *he* and his *Wife* say, that they verily believe the *Prisoner* knew that he was in the *Proclamation*; and she her self being examined, says, that she might hear that he was in the *Proclamation*, and that his House was searched, and he could not be found, and yet she conceals him;

what

what could be the meaning of this, but that *she* was very zealous to maintain the *Conspiracy*, and was a great Assistant to all concerned in it? *She* will not tell you any other cause, why she should be concerned to convey this Man beyond Sea; and therefore, in all reason, you ought to conceive it was for this.

The *Jury* being thus sent out, and returning, *Mrs Gaunt* desired to be heard, declaring, that she hoped they would not take any advantage against her, and that she had some Witnesses to call; But, *Wythens* said, It ought not to be done, you ought to take the *Verdict*; and so the *Jury* pronounced her Guilty, and *Jenner* the *Recorder* passed this Sentence, *You are to be carried back to the place from whence you came, from thence you are to be drawn upon a Hurdle to the place of Execution, and there you are to be burnt to Death.* Mrs *Gaunt* only said, I say, this Woman did tell several Untruths of me; I don't understand the Law.

The Sentence was executed upon this *Excellent Woman*, upon *Friday* then following, being the 23d of *October* 1685. When *she* left her *Murderers* the following *Memorial*.

New-

Newgate, 22d of October, 1685.

NOt knowing whether I should be suffered or able, because of Weaknesses that are upon me, through my hard and close Imprisonment, to speak at the place of Execution, I write these few Lines, to signifie I am well reconciled to the way of my God towards me, tho' it be in ways I looked not for, and by terrible things, yet in Righteousness; for having given me Life, he ought to have the disposing of it, when and how he pleaseth to call for it; and I desire to offer up my all to him, it being but my reasonable service; and also the first terms that Christ offers, that he that will be his Disciple must forsake all and follow him; and therefore, let none think it hard, or be discouraged at what hath happened unto me; for he doth nothing without cause in all that he hath done unto us; he being Holy in all his Ways, and Righteous in all his Works; and it is but my lot in common with poor desolate Sion at this day; neither do I find in my heart, the least regret of any thing that I have done in the service of my Lord and Master Jesus Christ, in favouring and succouring any of his poor Sufferers, that gave themselves favour to his righteous Cause; which Cause, tho' it be

now

now fallen and trampled on, as if it had not been anointed; yet it shall revive, and God will plead it at another rate, then yet he hath done, with all its Opposers and malitious Haters; and therefore let all that love and fear him, not omit the least duty that comes to hand, or lieth before them, knowing that Christ hath need of them, and expects that they should serve him; and I desire to bless him that he hath made me useful in my Generation, to the comfort and relief of many distressed Ones, that the Blessing of those that have been ready to perish hath come upon me, and I have been helped to make the Heart of the Widow to sing; and I bless his holy Name, that in all this, together with what I was charged with, I can approve my Heart to him, that I have done his Will, tho' I have crossed man's Will; and the Scripture that satisfied me in it, is the 16th of Ha. 3, 4. Hide the Out-casts, betray not him that wandreth; let my Out-casts dwell with thee. *Obadiah* 12, 13, 14. Thou shouldst not have given up him that escaped, in the day of distress. *But Man saith, You shall give them up, or you shall dye for it. Now whom to obey, judge ye.* So that I have cause to rejoyce & be exceeding glad, in that I suffer for Righteousness sake, and that I am

ac-

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accounted worthy to suffer for well-doing, and that God hath accepted any Service from me, that hath been done in Sincerity, tho' mixed with manifold Weaknesses and Infirmities, which he hath been pleased for Christ's sake to cover and forgive. And now as concerning my Fact, as its called, alas it is but a little one, and might well become a Prince to forgive, but, He that sheweth no Mercy, shall find none; and I may say of it, in the Language of Jonathan, I did but taste a little Honey, and lo, I must dye for it; I did but relieve a poor, unworthy and distressed Family, and lo, I must dye for it. I desire in the Lamb-like Will, to forgive all that are concerned; and to say, Lord lay it not to their Charge; but I fear and believe, that when he comes to make Inquisition for Blood, Mine will be found at the Door of the furious * Judge, who, because I could not remember things, through my dauntedness, at Burton's Wife & Daughter's witness, and my Ignorance; took advantage thereat, and would not hear me, when I had called to mind, that which I am sure would have invalidated their Evidence; and tho' he granted some things of the same nature to another, yet he granted it not to me; my Blood will be also found at the

* Wythens.

the Door of the Unrighteous Jury, who found me Guilty upon the single Oath of an Outlawed man; for there was none but his Oath about the Money, who is no Legal Witness, tho' he be pardoned, his outlawry not being recalled; and also the Law requires two Witnesses in point of Life; and then about my going with him to the place mentioned, it was, by his own Words, before he could be Outlawed, for it was two Months after his descending, and tho' in a Proclamation, yet not high Treason, as I have heard; so that I am clearly murdered by you; and also bloody Mr Atterbury, who so insatiately panted after my Life; and tho' it is no profit to him, yet through the ill-will he bore me, left no Stone unturned, as I have ground to believe, until he brought me to this; and shewed favour to Burton, who ought to have dyed for his own Fault, and not to have bought his Life with mine: And lastly, Richardson, who is cruel and severe to all, under my Circumstances, and did at that time, without all Mercy or Pity, hasten my Sentence, and held up my Hand that it might be pronounced; all which, together with the great one of all, * by whose Power all these, and multitudes of more

* King James the second.

Cruelties are done, I do heartily and freely forgive, as done against me: But as it is done in an implacable mind against the Lord Christ, his Righteous Cause, and Followers, I leave it to him who is the Avenger of all such Wrongs, and hath said, I have raised up one from the North, and he shall come upon Princes as upon Morter, and as the Potter treadeth Clay, Isa. 41. 25. He shall cut off the Spirit of Princes, and be terrible to the Kings of the Earth, Psal. 76. 12. And know this also, that though you are seemingly fixed, and because of the Power in your Hands, and a neighing out your Violence, and dealing with despightful Hands, because of the old and new hatred, by impoverishing, and by every way distressing those you have got under you; yet unless you secure Jesus Christ, and his holy Angels, you shall never do your business, nor your Hands accomplish your Enterprizes; for he will come upon you e're you are aware; and therefore, O that you will be wise, instructed and learn, is the desire of her that finds no Mercy from you.

Elizabeth Gaunt.

Postscript.

# Postscript.

Such as it is, you have it from her, who hath done as she could, & is sorry she can do not better; hopes you will pitty and cover weakness, shortness, and any thing that is wanting; and begs that none may be weakned or humbled, at the lowness of my Spirit; for God's design is to humble and chase us, that he alone may be exalted in this day; and I hope he will appear in the needful time, and it may be reserved the best Wine till last, as he hath done for some before me; none goeth to Warfare at his own charge, and the Spirit bloweth, not only where, but when it listeth; and it becomes me, who have so often grieved, quenched and resisted it, to wait for and upon the motions of the Spirit, and not to murmur; but I may mourn, because through want of it, I honour not my God, nor his blessed Cause, which I have so long loved and delighted to love; and repent of nothing about it, but that I served him and it no better.

# Remarks upon the Tryal of Mr Joseph Hayes, at the King's Bench upon an Indictment of high Treason, for corresponding with Sr Thomas Armstrong.

Mr *Hayes* was brought by *Habeas Corpus* upon the 3d of *November* 1684, from the *Gatehouse*, and was arraigned upon an Indictment to this effect, viz. That he being a false Traytor against the King, & the 31st of August, in the 36th Year of the King, conspiring Sr Thomas Armstrong to have compassed the death of the King, and to have fled for that cause, and traytorously relieve, comfort and maintain him, and for his Relief and Maintenance, did pay the sum of 130 l. against the duty of his Allegiance, &c. To this he pleaded *Not Guilty*.

Upon the 21st of *November* 1684, he was brought to Tryal, before the Lord Chief-Justice *Jeffryes*, *Judge Holloway*, *Judge Wythens* and *Judge Walcot*; and the

*Jury* being called, he prudently challenged the following Persons; which if he had not done, it is more than probable, that he had dyed as poor *Colledge* did at *Oxford*.

*Sr Thomas Griffith*,
*Richard Ellis*,
*Thomas Langham*,
*Henry Whistler*,
*Nicholas Smyth*,
*Thomas Soper*,
*Tho. Passenger*,
*Henry Minchard*,
*Peter Jones*,
*William Crowch*,
*Peter Devet*,
*Henry Lodes*,
*William Fownes*,
*Charles Gregory*,
*William Peele*,
*Richard Weedon*,
*Thomas Pory*,
*Tho. Peircehouse*,
*Richard Burden*,
*John George*,
*John Steventon*,
*Robert Watkins*,
*George Twine*,
*Thomas Shore*,
*Robert Townshend*,
*James Bush*,
*Walter Mastors*,
*Thomas Larkham*,
*Edward Cooke*,
*William Fashion*,
*John Flowerdew*,
*John Greene*,
*John Grice*,
*Charles Fowler*, and
*James Smyth*.

In all 35.

The Jury sworn, were,

| | |
|---|---|
| *Samuel Sheppard,* | *Edward Piggot,* |
| *Daniel Allen,* | *Tho. Brailesford,* |
| *Rowland Platt,* | *Edward Cheeke,* |
| *Adam Bellamy,* | *Edw. Underwood,* |
| *Daniel Templeman,* | *Robert Masters, &* |
| *William Dewart,* | *William Warren.* |

It is likely that he would have challenged one, if not more of the last four, but that he had challenged the number of 35. before these four were called; and the Law allowed him not to challenge more.

Then, the *Indictment* being read, *Mr Dolben as Counsel* for the *King*, opened it to the *Jury*.

*Mr Attorney General* then enforced the Charge thus; After *Sr Tho. Armstrong* had fled, the *Prisoner* relieved and aided him with Money; and that, after he was *Indicted*, and sued to the *Exigent*; besides, a *Proclamation* followed upon his flight, which was a sufficient notice to all the *King's Subjects*; *Sr Thomas* went by the Name of *Henry Laurence*, beyond Sea; by that Name the *Prisoner* held a Correspondence with him, and sent him a Letter, dated the 21st of *August*, and tells him, he had sent him a Bill of *Exchange*,

for

for 165*l.* drawn upon his *Brother*, *Israel Hayes*, who was acquainted with *Sr Thomas*.

If it were not for these, receiving and nourishing of *Traytors*, they would not lurk at *Amsterdam*, as they do. The Letter was taken about *Sr Thomas*, and we shall prove it is the Prisoner's Handwriting, and that *Sr Thomas* received the Money.

*I hope you will take care*, by Convicting this *Gentleman*, *to stop the Fountain*, that issues so much supply to these Traytors, that lurk abroad.

But like good Men, they took all the care they could, to stop the Fountain of Blood, that to the scandal of the Nation had too long issued from the *Old Baily*.

*Mr Hayes* then affirmed, that he never knew *Sr Thomas* in his life.

Then, the *Indictment* against *Sr Thomas* was read, which was found the 12th of *July*; and Mr *Glover* proved a Copy of the *King's Proclamation* against *Sr Thomas* dated the 28th of *June*, 1683.

Then, *Ezekiel Everis* was sworn, and testified, that in *August* 1683, he was at *Cleve* in *Germany*, with the *Lord Grey*, who went by the name of *Thomas Holt*, and *Sr Tho. A.* came thither, by the

Name of *Mr Henry Laurence*, and shew'd him a Bill of *Exchange*, from *England*, upon *Mr Israel Hayes* in *Amsterdam*, for 160 *l.* odd Money; and that it was, for 150 *Guineas*, paid in *England*; and he told him, it was drawn by *Joseph Hayes*; and it was signed *Joseph Hayes*; and the Bill was accepted, and he saw *Israel Hayes* his Letter to *Sr Thomas*, by the Name of *Laurence*, which mentioned the sending the said sum to *Cleve*.

The *Common Serjeant* (*Crispe*) then delivered a parcel of Letters into the Court, and swore that he received them of the *Lord Godolphin*, and they had been ever since in his hands.

The *Lord Godolphin* then testified, that he received three Letters produced in Court, from Mr *Constable*, Mr *Chudley's* Secretary, who told him they were taken about *Sr Thomas*, that one of them, without any Name, mentioned 150 Guineas returned to *Henry Laurence*.

*Constable* testified, that he was present, when the *Stout* of *Leyden* apprehended *Sr Tho. A.* and that the Letters were taken out of his Pocket, and he himself delivered them to *Mr Chudley*, who sealed them up and sent them, by him, to the *Lord Godolphin*.

*Charles*

*Charles Davis* testified, that taking Boat from *Amsterdam* to *Rotterdam*, he met *Israel Hayes* and *Sr Tho. A.* coming to take Boat, and *Sr Thomas* went with him in the Boat, and he told him his Name was *Henry Laurence.*

*Davis* added, that he lodged a Month in one *Briscow's* House at *Amsterdam*, where there was a *Club* every *Thursday*; There were Mr *Israel Hayes*, Mr *Henry Ireton*, one *Wilmore*, *Emerton*, *Dare*, and some other *English Merchants*; and he heard them several times, abuse the *King* at the *Table.*

The *Attorney General* then shewed *Mr Hayes* a Letter, saying, It may be he will save us the labour of proving it; but Mr *Hayes* disowning it,

Mr *Walpoole* was called, and Mr *Hayes* said, he was my Servant, and went away, after a rate, that possibly would not be allowed.

*Walpoole* testified, that he served *Mr Hayes* almost four Years and three quarters, and did believe the Letter to be Mr *Hayes* his hand.

Mr *Hayes* said, *My Lord*, in matters of *Treason*, *I hope you will not admit of comparison of hands and belief, for Evidence.*

The

The *Chief Justice* answered, Yes, no doubt of it.

*Mr Hayes* replyed, It has not been so in other Cases, that have not been Capital; as particularly in the *Lady Carr's* Case.

The *Chief Justice* said, that is a mistake, you take it from *Algernon Sidney*, but without all doubt, it is good Evidence.

*Judge Wythens* said, Comparison of Hands was allowed for good Evidence in *Colman's Case*.

*Mr Hayes* answered, That, with submission, vastly differs; Those Letters were found in his own Custody; This was not found in my possession, but in another Man's, and in another Nation.

*Sr John Trevor*, Counsel for the *King*, said, This *Gentleman* was a Trader with the *East-India-Company*, and made Contracts with them, which are entred in their Books; We will compare them with the Writing in this Letter.

The *Common Serjeant* then called *Harman* and *Brittle*, and demanded of them, where the Books were; and they produced them.

*Harman* testified, that he knew *Mr Hayes*

*Hayes*, and that he made several Contracts in 1683, and that he saw him in *September* 1683, subscribe his Hand to a Book of the Companies shewn to him.

*Bristo* testified, that he is *Porter* in the Street to the *East-India-Company*, and that he saw Mr *Hayes* write his Hand, to a Book shown to him.

Capt. *Petrebouse* produced a Note, which he said was Mr *H.* his, and that he supposed it to be his hand, and compared it with the hand in the Book, and said, that he delivered the Goods upon it; and *Walpoole* then said, he believed it to be *Mr Hayes* his hand.

Query, if not the same *Petrebouse* in the Pannel of the Jury.

Then Mr *Sturdivant* was called, and they shew'd him the Letter, and he said, Here is *Joseph Hayes* writ, but I do not know it to be his Hand.

The *Common Serjeant* warmly said, that Mr *Sturdivant* swore he did know Mr *H.* his hand, before the *Grand Jury*; but Mr *Sturdivant* affirmed, the *Common Serjeant* was under a mistake.

Then

Then Sr John Trevor called for Mr Hardresse, but the * Common Serjeant answered, That he was out of Town; before he could be served with a Subpœna.

* The Common Serjeant, as hath been elsewhere observed, upon the discovery of Keeling's Plot, in 1683. boasted what work that Plot would make, when it came into the City; We now have him pulling it into the City, by Head and Shoulders; and find him, in this Case, appearing and exerting himself, in a three or four fold capacity, (viz.) the Manager, (if not Contriver) of this prosecution; and a Counsel, Solicitor, and Witness, against the worthy Citizen, now designed to destruction.

Then the Letter was read, it was subscribed *Joseph Hayes*, and dated the 31st of *August* 1683. directed to Mr *Henry Laurence* senior, at *Amsterdam*; and began thus, *Sir, at your desire I have sent you a Bill, &c.*

The Letter and the *East-India* Books were then shewn to the *Jury*, and to the *Prisoner*.

Mr *Hayes* denyed the Letter to be his Writing, and said, 'Tis very strange I should not know my own hand; May not *Counsel* be admitted to plead, *Whether comparison of hands and belief, are any evi-*

dence

dence in Criminal Causes? I have been informed, it hath been denyed to be evidence.

The *Ch. Justice* told him he was under a mistake, some body has put it into your Head, and puffed you up with a vain fancy; there is no such thing. 'Tis a Fiction, a meer Whim, only said by *Mr Sidney*, and no ground in the World for it.

*Mr Hayes* replyed, Was it not so in the Case of my *Lady Carr*? there is a Record of that I suppose.

The *Chief Justice* affirmed, it was not so, and said, Don't talk of it, * there was no such thing at all. —— Comparison of hands was allowed for good proof, in *Sidney's Case*; We must not alter the Law for any Body.

Mr *Attorney General* said, Besides this comparison of hands, We shall give an account of the Correspondence of the *Prisoner's Brother*, and that he received the Money of him; and then said, *My Common Serjeant*, Where had you this Paper? The *Common Serjeant*, to shew his care and zeal in this matter, said, *Pray have a care of the Papers*, and then gave evidence that he had them from my

* It was in Trinity Term 1669. Another Case.

Lord Godolphin, and said, This is an Account of the Receipt and Disbursement of the Money; Shew it Mr Constable.

Constable said, This is one of the Papers was taken out of Sr Thos's Pocket. It being shewn to the Jury, one of them demanded, whether any one proved the hand, what was in that Note?

The Attorney answer'd, No, but Everit swears, that Sr T. H. shew'd him a Bill, subscribed Joseph Hayes, for so many hundred Guilders.

The Common Serjeant said, He says it was 160 odd Pounds; now the sum of this Note is 161 l. 5 s. which is the change of 150 Guineas.

Mr Norris concluded, saying, We have done as present.

Mr Hayes then said, Here is no body proves this Letter to be my hand, positively; They only prove it by similitude, and comparison, and belief.

I conceive there is but one Witness, that that Letter was found in Sr T. H.'s hands. Everit says, he saw a Bill had my Name to it; Sir, you did not know me, nor ever saw my hand.

Everit answered, No, never in my life.

Mr

*Mr Hayes* then said, 'Tis only an evidence of Reputation; he heard it was my Bill; you saw no Money paid upon it, did you?

*Evans*, No; but I saw a Letter from Mr *Israel Hayes*, that gave some account of it.

*Mr Hayes* said, All this is but Similitude and Circumstance; and *I thought in cases of Treason there ought to be two Witnesses*, and hope you will let it be so here; —here is no evidence but the Letter, and that is not two Witnesses; There is no body has proved, the *knowingly*, in the *Indictment*; that runs, that I knew *Sr T. A.* and his *Treason*, that *ought* to be proved, but I am sure 'tis not; your *Lordship* says that the *Indictment* and the *Proclamation* are sufficient notice, that he was a *Traytor*; that may admit of *Counsel* to debate it; There ought to be Witnesses that could shew me to be concerned with him; which no Body in the World can prove; or that I ever saw him; and that *Witness*, that says he saw the Bill, or this Letter, does not know that I wrote it. There are them that say, they heard of Money paid upon this Bill, but there is not one of them says, he saw any Money paid;

paid; and these are several Witnesses, every one to a several thing.

Here is no proof, but by the *East-India Porters*, and those who say, they believe this Letter to be my hand; No body says he saw me write this Letter, or had any Correspondence with *Sr T. A.*

If they pretend there was Money paid beyond *Sea*; Is this *Imbezzlement* well laid, for it is laid to be paid in *London*? The payment of Money beyond Sea, can be no evidence of the Fact upon this Indictment, for the *Jury* of *London*, are to enquire of matters arising in *London* only; If I am to be tryed for payment of Money beyond *Sea*, the fact should have been laid there, and the *Tryal* were to proceed upon the *Statute* of 35 *H.* 8. cap. 2. The *Indictment* should be taken, by Special *Commission*, from the *King*, and the *Tryal* be in the *County*, that the *King* should chuse; I desire *Counsel* upon this point.

*Lord Chief Justice*, No, 'tis an idle Whim, and I would fain know the *Counsel* that put that foolish Notion into your head.

*Mr Hayes*. If you will allow me *Counsel*, you shall hear who they are; I have been informed the Law is so. *Chief*

*Chief Justice.* We are of another opinion: If any whimsical Notions are put into you, by some *Enthusiastick Counsel*, the *Court* is not to take notice of their *Crochets*.

Mr *Hayes* proceeded, and said, The *Witnesses* are Strangers to me; There is is one that has been sworn, to whom I have paid several thousands of pounds, that says he does not believe it to be my hand; then he called *Mr Sturdivant*, who looking upon the Letter, said, *I do not believe it to be his hand*; I have had dealings with him, and he hath given me many *Receipts*.

*Mr Hayes* then said, There have been a great many *Forgeries*; and this Letter is forged; there have been *Forgeries* so like, that the Persons themselves have not known their own hands.

*Chief Justice.* Every body knows, that a hand may be counterfeited, very like; in *Mr Sidney's* Case, Mr *Wharton*, a young *Gentleman*, not above one or two and twenty, said, he could undertake to counterfeit any Man's hand whatsoever.

Mr *Hayes* then told the *Jury*, that he

was not a Man of that Quality, to give Sr *T. A.* 150 *Guineas.*

*Chief Justice. We all know you have been a very* † *active Man, a busie Fellow about the City; as forward a* Spark, *as any I know, of a great while.* I don't know what you talk of your Quality, but We know your qualifications, *you have always been factious and turbulent, against the* King *and the* Government.

† The resolution in that day, was to enslave the City & the Nation, and every one who was found to withstand it, was treated with this sort of Language, and then made a Traytor, if they found an opportuniry, unless by chance, as in this case, a Jury failed them.

Mr *Hayes* then affirmed, that he neither gave, nor lent, nor returned, any sum of Money to this Person; and then called Mr *Langley*, who testified, that a *Letter* was Counterfeited, and a Bill of *Exchange* for 450 *l.* and so exactly like, that if he had not known of it before he saw it, he must have owned it, for his hand; and the party that paid the Money, paid it in his own wrong, for he never drew any such Bill.

Mr *Hayes* added, Mr *Common Serjeant* had my Books several dayes in his hands,

*where*

*where there is an Account of* 20000*l. between my Brother and me*; and if I would ſet my hand to ſuch a Letter and Bill, and write my Name at length, Is it not as reaſonable that I ſhould put the Name of *Laurence* in my Books; and if it were there, it would appear.

Indeed, here is an Account produced, of divers parcels of Money diſburſed, in little ſums; but, I appeal to the *Merchants*, whether ever any Bill of *Exchange*, was ever paid, in ſuch parcels; No *foreign Bill*, was ever paid by 3*l.* or 5*l.* or 20*l.* at a time: it muſt be paid at the day, or it will be proteſted—— here is a computation of a ſum, like to the ſum in the Bill; but theſe are Suppoſitions, and not proof.

Then Mr *Hayes* called *Alderman Jeffryes*, to ſpeak to his Reputation and Converſation; who ſaid, that he had known him many Years, and never knew any hurt by him.

The *Chief Juſtice* demanded of the *Alderman*, whether he had been at any of the *Elections* at *Guild-hall* for *Mayors* or *Sheriffs*, when *Mr Bethel* and *Mr Corniſh* and *them People* were choſen; and whether he had ſeen Mr *Hayes* there,

and how he did behave himself? * A very forward *active* Man, I will warrant you.

*Alderman Jeffryes* answer'd, I suppose I may have seen him there, but I cannot say any thing to his behaviour.

Then Mr *Hayes* called Mr *Pellet*, Mr *Lloyd*, Mr *Withers* senior, *Mr Withers* junior, and *Mr Hugh White*, who gave a fair account of his dealing and Conversation. *He* then said, that he would trouble the *Court* with no more Witnesses.

Mr *Attorney General* then said, that he would call one Witness more against him; and ordered *Atterbury* the *Messenger* to be sworn, and the Letter was shewed to him.

*Atterbury* said, that he apprehended *Mr Hayes*, and brought him before the *King*, and was present when the Letter was shew'd to him, and the *King* and *Lord Keeper North*, press'd him to own, whether

* It is true, that he was, upon every occasion, active in the maintenance of the City-Rights; and his Lordship, and the Common Serjeant had ever been as forward *Sparks* on the other side; & that made them so intent, upon the destruction of every well deserving, worthy Citizen, whom they could draw under an Accusation.

whether it was his hand or no; and he ſaid, he ſhould ſay nothing to it, if they could prove it upon him well and good.

*Mr Hayes* contradicted this *Miſchievous* and *Bloody Man*, ſaying, his *Majeſty* was not there.

*Atterbury* anſwered, As I remember, the *King* was there; but by and by ſaid, he did only imagine the *King* was there.

The *Chief Juſtice* then back't *Atterbury*'s Evidence, ſaying, I was there, what he ſays is true; you ſaid, *I am not bound to accuſe my ſelf*; 'tis true, you did deny that you knew *Laurence* or *Armſtrong*; and 'tis as true you would not abſolutely deny the Letter, but ſaid, you were not bound to accuſe your ſelf.

*Mr Hayes* then ſaid, *My Lord*, I did hope, that in point of Law, my *Counſel* ſhould have been heard to thoſe things I mentioned; and I wiſh you would favour me in it; But that being denyed him, he addreſſed himſelf to the *Jury*, ſaying, Nothing has more troubled me, ſince my Confinement, than the imputation of *high Treaſon*, a thing I alwayes deteſted; I never knew any, the leaſt thing of the *Conſpiracy*, but by the *Tryals*, or other printed Papers; not one of the *Conſpi-*

*rators*, who have come in, or been taken, have charged me in the least; nor did he himself accuse me, with whom I am charged to have this Correspondence. *Gentlemen*, I desire you to consider, that 'tis my Life is concerned, & I beg you would consider what these *Witnesses* have testified; They are not positive in any respect, nay, there are not two, to any one thing that is charged; *Constable* says, the Letter was found amongst Sr *T. A's* Papers; he says no more; and here are not two Witnesses to that; *Everis* tells you, he saw this Bill, but did not know my hand; There is No body tells you I wrote this Letter, but it is found in another Man's custody, in another Nation.

*Gentlemen*, 'tis very hard, that by comparison of hands, a man's Life should be in danger; when, in lesser Crimes, it has been denyed to be good evidence; and none of you can escape the same danger, if this be allowed to be evidence; for your hands may be counterfeited, as well as mine.

If there had been any probability of my knowing him, it had been something; but there is not one that testifies, that ever I knew him, nor indeed did I;

There

There is a great deal of Circumſtance made uſe of, upon the account of his acquaintance with my *Brother*, in *Holland*; but, 'tis ſtrange, there ſhould not be ſome evidence, of a further Correſpondence between him and me, if there were that intimacy, that ſuch a Letter as this doth import.

I muſt, with Reverence to the *divine Majeſty* ſay, and I call *God*, *Angels* and *Men*, to witneſs the truth of it, as I ſhall anſwer it to him, before whom, for ought I know, I am quickly to appear; that I never in my Life ſpoke with *Sr T. Armſtrong*, nor was ever in his Company, nor ever wrote to him, by the Name of *Laurence*, or any other Name; And I do ſolemnly ſay, in the preſence of *God*, that I never gave, ſent, lent, paid, or ordered to be paid, any Money, directly or indirectly, to *Sr T. A.* or *H. Laurence*, or to him by any other Name, or to his uſe; I ſpeak it without any counterfeiting or equivocation.

*Gentlemen, There have been Overtures, if I would ſay ſome things, that my Life might be ſaved*; and 'tis not to be believed, that I would run the Riſque of my Life, if by ſpeaking the Truth, I could

ſave it——————

The *Chief Juſtice* did here appear enraged, and interrupted him, ſaying, What do you mean by this?

*Mr Hayes.* I ſay——————

*Chief Juſtice.* Ay, but you muſt ſay thoſe things that are decent and fit for us to hear; you muſt not inſinuate, as if the *Government* would make any ſuch Compacts as you talk of.

*Mr Hayes.* I ſay that Mr *Foſter* told me——

*Chief Juſtice.* If you offer that, I can tell you a Story, that perhaps you will be very unwilling to hear; on my word, 'twill be very unpleaſant to hear it; you had better let thoſe things alone, for you will but draw a load upon you.

*Mr Hayes.* I beſeech your *Lordſhip* to hear me——

*Chief Juſtice.* Yes, I will hear you, provided you keep within due bounds, but we muſt not ſuffer theſe things.

*Mr Hayes.* I ſay nothing but this, it has been told me, the way to ſave my Life is to confeſs.

*Chief Juſtice.* As you repreſent it, 'tis a reflection upon the *Government*—— you talk of Overtures having been made you;

you; don't make me say, what I have no mind to say.

*Mr Hayes.* I say, *Mr Foster* by Name told me, there was no way for me to escape, but by Confession.

*Chief Justice.* You had best call *Mr Foster*, to know how he came to tell you so; If you do, I will tell you of another thing, of * 4 or 5000 *l.* that was offered for your escape, you had better forbear, or else I shall put you in mind, of a *Brother* of some Body, that is at the *Bar*.

*Mr Hayes.* My *Lord*, I was told that was the way; *Gentlemen* of the *Jury*, I have declared to you the whole truth, with all the solemnity that becomes an innocent Man, & not an ill Man——Besides, that you have

* The Story of the 4 or 5000 *l.* was this, an eminent *Papist*, very acceptable to King *Charles* the second, undertook to some of the Friends of Mr *Hayes*, that a *Pardon* should be had, for 4000 *Guineas* to the *King*, & 1000 to himself; but he afterwards declared, that the *King* had refused him therein, and told him, that he was advised, that he had better give that *Popish Friend* 4000 *l.* out of the *Exchequer*, than pardon *Hayes*; but that he gave his *Royal Word*, that the Overture should not hurt *Mr Hayes*; nevertheless, the *murdering Adviser* of that *King*, doth here publish it, to insinuate the *Prisoner's* guilt.

heard

heard, in all this evidence, is nothing but *Circumstance and Hear-say*; and shall a Man's Life be taken away, for *I believe*, and *I think*, or *I have heard*?

*Gentlemen*, I know you are my *Fellow Citizens* and *Fellow Christians*, and of the same *Reformed Religion* that I am; and I hope you are sworn into this service without any prejudice against me; but with an impartial Resolution to do Justice; and therefore I cheerfully leave the matter with you; I am sure, that if *God* help me and deliver me in this Exigency, that it is he and you under him, that preserve my Life——

*Gentlemen*, The great Incertainties, Improbabilities and Consequences in this case, I hope will be weighed by you; and make you the better to consider the proof, which is made, by none but such as are Strangers to me; since then, they know me not, I hope you will weigh it, before you give it against me; We must all dye, and I am sure it will be no grief to you, to acquit a Man that is innocent; I leave it with you: *The Lord direct you.*

Then *Fenner* the *Recorder*, to aggravate the matter spoke thus; The *Treason* charged on the *Prisoner*, is of that sort,

ſort, that if he be guilty; he will be a juſt example, to terrifie others from doing the like; for if Traytors had not perſons to ſupply them with Money abroad, it may be, *they would not have ſo much Courage to run away.*

We have ſatisfied you, that *Sr T. A.* was indicted, that an Exigent was gone againſt him, upon that account; here was a *Proclamation*, and *Sr T. A.* named in it; and ſo, at his rate of talking, the *Recorder* repeated the Evidence of the Witneſſes, and concluded.

*Gentlemen*, We think that his defence has been ſo little, and our proof ſo ſtrong, that you have good ground to find him Guilty.

The *Chief Juſtice*, then ſummed up the matter to the *Jury*, in a Speech of of a vaſt length, which was in ſubſtance this.

*Gentlemen* of the *Jury*, This is an *Indictment* of *high Treaſon*, againſt the *Priſoner* at the Bar; and you are to try it, according to your evidence; The *Priſoner's* affirmation of his innocence, is not to weigh with you. Nay,

I muſt tell you, I cannot, but upon this occaſion

occaſion, make a little Reflection upon ſeveral of the horrid *Conſpirators*, that did not only, with as much ſolemnity, imprecate Vengeance upon themſelves, if they were guilty of any Treaſon; but thought they did *God Almighty* good ſervice in that helliſh *Conſpiracy*: It is not unknown, one of the Perſons proſcribed in this *Proclamation*, did declare, they ſhould be ſo far from being eſteemed *Traytors*, That they ſhould have Trophies ſet up for them; and all this, under the pretence and enamel of *Religion*: Nay, I can cite to you, an inſtance of another of the *Conſpirators*, that after a full and evident proof, and plain Conviction, of having an hand in it, when he comes upon the Brink of Death, and was to anſwer for that horrid fact, before the great *God*, he bleſſed Almighty God, that he dyed by the hand of the *Executioner*, with the *Ax*, and did not dye by the *Fiery Tryal*: *He bleſſed* God, *at the place of Execution, that he dyed a* Traytor *againſt the* King *and* Government, *rather than dyed a* Martyr *for his* Religion.

I think it neceſſary to make ſome Reflection upon it, when Men under the pretence of *Religion*, are wound up to that heigth,

heigth, to foment Differences, to disturb and distract the Government, to destroy the Foundations of it, to murder his sacred *Majesty*, and his *Royal Brother*; and to subvert our Religion, and Liberty and Property; and all this carried on, upon pretence of doing *God* good service.

You are to go according to evidence; as the Blood of a Man is precious, so the *Government* also is a precious thing; the Life of the *King* is a precious thing; The preservation of our *Religion* is a precious thing; and therefore, due regard must be had to all of them.

I must tell you, in this horrid *Conspiracy*, there were several Persons, that bore several parts; Some, that were to head and to consult; *there was a* Council *to consider*; Others were designed to to have a hand, in the perpetrating of that horrid Villany, that was intended upon the Persons of his *Sacred Majesty* and his *Royal Brother*, and with them, upon the Persons of all his *Majesties Loyal Subjects*, that acted with duty, as they ought to do; There were others, that were to be aiding and assisting (as in the case of the *Prisoner*, if you find him guilty)

guilty) aiding, abetting, aſſiſting by Money, or otherwiſe, or harbouring any of thoſe Perſons, that were concerned therein.

Then he recounted the Evidence given againſt the *Priſoner*, and made ſuch Remarks upon the ſame, as he thought fit.

The *Jury* withdrew, and *ſpent two hours in conſideration of the matter*; and then returning, gave their *Verdict* (to the diſappointment and vexation of the *Chief Juſtice*, *Common Serjeant* and others) that the *Priſoner* was *Not Guilty*.

Mr *Attorney General* thereupon ſaid, *My Lord*, tho' they have acquitted him, yet the Evidence was ſo ſtrong, that I hope, your *Lordſhip* and the Court will think fit, to bind him to his good behaviour, during his Life.

The *Chief Juſtice* anſwer'd, *Mr Attorney*, that is not a proper Motion, at this time.

*So the* Priſoner *was diſcharged, after he had been impriſoned five Months.*

Tho' *Mr Hayes*, to the eternal Honour of ſome good Men, who were upon his *Jury*, came off with his Life; he was by this Proſecution, beaten out of as good

good and valuable a Trade, as moſt *Linnen Drapers* in *London* had; and was, by conſequence, highly impaired in his Eſtate.

About the ſame time, Mr *Roſwell*, a very worthy *Divine*, was tryed, for Treaſonable Words in his Pulpit, upon the Accuſation of very vile and lewd *Informers*; and a *Surry Jury* found him Guilty of *high Treaſon*, upon the the moſt villanous and improbable evidence, that had been ever given, notwithſtanding *Sr John Talbot* (*no Countenancer of Diſſenters*) had appeared with great generoſity and honour, and teſtified, that the moſt material *Witneſs*, was as ſcandalous and infamous a Wretch as lived.

It was at that time given out, by thoſe who thirſted for Blood, that Mr *Roſwel* and Mr *Hayes* ſhould dye together; and it was upon good ground believed, that the happy deliverance of Mr *Hayes*, did much contribute to the preſervation of Mr *Roſwel*; tho', it is very probable, that he had not eſcaped, had not *Sr John Talbot's* worthy, and moſt honourable deteſtation, of that accurſed Villany; prompted him, to repair from the Court of *King's Bench*, to *King Charles* the ſecond;

ſecond; and to make a faithful repreſentation of the Caſe to him; whereby, when *inhumane bloody Jeffryes*, came a little after, in a tranſport of Joy, to make his Report of the eminent ſervice he, and the *Surry Jury* had done, in finding Mr *Roſwel* guilty; the King (to his diſappointment) appeared under ſome reluctancy, and declared that Mr *Roſwell* ſhould not dye. And ſo he was moſt happily delivered; and being, by this remarkable Providence of *God*, ſtill alive; he would (at leaſt in my opinion) do a very uſefull and ſeaſonable piece of ſervice to this Age, and to thoſe which are to ſucceed; in publiſhing a full Account of the whole Proceedings againſt him.

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Remarks

Remarks upon the Tryal of *Mr Charles Bateman*, at the *Old-Bayly*, Upon the 9th day of *December* 1684, before the *Lord Chief Justice Herbert*, &c.

IT was very well known that *Mr Bateman*, as a good *Citizen* & true *Englishman*, had constantly asserted and stood up for his native Rights & Priviledges; and by consequence, he became obnoxious to those, who had conspired and resolved the ruin thereof, and of the *Protestant Religion* with them.

It is an undoubted truth, that this worthy *Citizen's* seasonable and necessary endeavour (with many others of eminent desert) to withstand the fatal Usurpation of *Sr John Moore*, in imposing *Sr Dudly North* and *Sr Peter Rich*, upon the *City* for *Sheriffs*, in the year 1682, did expose him to the implacable rage of the *Conspirators*.

Our *Parliaments* and *Courts* of *Justice* had been for some years, most strenuously attempting to extirpate the hellish

*Popish Plot*, and accurſed *Popery*; but there were then found Miſcreants, who ſet themſelves to run the Kingdom upon a wrong ſcent; and they never wanted a *Proteſtant Plot*, when it might cover and ſecret their own; and all wiſe men ſaw them ready to ſtart one, when *Sr John Moore* had conſtituted proper *Sheriffs*.

At that time the *Earl* of *Shaftesbury*, well knowing that his Innocence would not be able to guard him, againſt hired and ſuborned Raſcals, and *pack'd Juries*; and he remembring what baſe and villanous Arts had been uſed to deſtroy him; his Sagacity prompted him to put himſelf out of the reach of that implacable rage, which had ſo long purſued him; and in order to it, he concealed himſelf, for ſome time, in *Mr Bateman's* Houſe; and afterwards (till he retired into *Holland*) in the houſe of that worthy upright *Engliſh-man Captain Tracy*, in *Goodman's Fields*, whoſe Life was therefore threatned, and eminently endangered, but the divine Providence delivered him, after he had ſuffered a long and cloſe Impriſonment (in Irons) in *Newgate*, under the Tyranny of *Richardſon*.

*Mr*

*Mr Bateman* was also the Refuge of that eminent and well-deserving *Citizen Sr Patience Ward*, whose innocence could not defend him against those wrathful Enemies, with his undaunted appearance against *Popery*, had stirred up against him; He retired to *Mr Bateman's* House, and was, by him concealed, until discovered by that *Blood-hound Atterbury*.

About that time (viz.) in *June*, 1683, the *Conspirators* had brought *Keeling's Plot* upon the Stage; and thereupon, *Mr Bateman* was taken up by *Atterbury*, and carried before *King Charles* the second, and there accused by * *Lee* the *Dyer*. The *King* had declared of that *infamous Varlet*, that if he were not checkt, he would swear all mankind into the *Plot*; Nevertheless, the *King* demanded of *Mr Bateman*, whether the *Earl* of *Shaftesbury* and *Sr Patience Ward*, did lodge at his House; which *Mr Bateman* acknowledging; he was committed *Prisoner* to the *Marshalsea*, and there kept eighteen Weeks; and then, there being no Prosecution, he was discharged upon Bail.

* He swore many of his Neighbours into Prisons and Irons, tho' till now (*Rouse* excepted) no man was ever tryed upon his Evidence.

At the time of the *Duke* of *Monmouth*'s Landing, not only the *Prisons* about *London*, but the *Halls* of many of the *City Companies*, were filled *by the then Lieutenancy*, with the best *Citizens*; under the imputation of being *Trayterously affected*, or *Enemies to the Government*; without any manner of accusation; and amongst them, *Mr Bateman* was imprisoned in *Cloth-workers-Hall*; but, being discharged from thence; in a short time afterwards, *Atterbury* (*who in that day took up whom he pleased*) fetched him from his House at *Highgate*, and kept him some time Prisoner in his own House (which he made a Goal, as long as Men would feed his Avarice) and then delivered him over to *Richardson*, by whom he was kept in a close Room, (with the Windows boarded up) sixteen or seventeen Weeks, before he was brought to Tryal.

That Mr *Bateman*, was a Person of very good sense and understanding, will not be denyed, by any Man to whom he was known, but by the rigour, severity and inhumane usage, wherewith he was treated, during his long Imprisonment; he was found, at the time of his Tryal to

be

be very much ſhattered in his underſtanding, and very uncapable of making a defence; and that defence which he made, was by the aſſiſtance of his Son, a very young Man, of about twenty years of age.

The Jury returned and ſworn to paſs upon him were,

| | |
|---|---|
| *Richard Aley*, | *Edward Rhediſh*, |
| *Richard Williams*, | *George Lilburne*, |
| *John Cannum*, | *Daniel Fowles*, |
| *Patrick Barret*, | *Peter Floyer*, |
| *John Palmer*, | *Laurence Cole*, |
| *James Raynor*, | *John Cooper*. |

Mr *Phips* opened the *Indictment*, to this effect, (viz.) That the *Priſoner*, the 30th of *May* 1683, trayterouſly, with other *Rebels*, conſpired to depoſe and kill the *King*, and to change and ſubvert the *Government*; and did promiſe and undertake to be aſſiſting and aiding, in the apprehending the *King*, and in taking and ſeizing the *City* of *London*, and the *Tower*; the *Savoy* and *Whitehall*.

Then *Serjeant Selby* and *Mr Moloy*, aggravated the charge in the *Indictment*, And,

*Josia Keeling* witnessed, that *Rumbold* * said he had a House, very convenient to plant Men in, to seize the *King*; and that *he had heard it discourſed*, that *Mr Bateman* was lookt upon, as a Person fitting to manage one *Division*, in order to an *Insurrection*, to seize the *Tower*, &c.

* Note, all this is hearſay, and no manner of Evidence againſt the Prisoner. *Keeling* had heard it discourſed, but for ought appears, it might be by Secretary *Jenkins*, for he named no Body.

*Tho. Lee* the *Dyer*, testified, that, he being acquainted by *Goodenough*, how the *City* was to be divided into twenty parts, and managed; he the ſaid *Lee*, nominated *Mr Bateman*, as a fit Man, to manage one part; and thereupon, he was desired by *Goodenough*, to speak with him about it; and that when he discourſed him, he plainly apprehended *Mr Bateman* was no ſtranger to it, nor boggled to give his conſent.

This *Lee* at the ſame time, that he ſwore againſt Mr *Bateman*, alſo offered to ſwear Treaſon againſt a Perſon with whom (to my certain knowledge) he never exchanged one word in his Life, and who never was in company with him, nor otherwiſe ſeem by *Lee*, than at a conſiderable diſtance, in a Coffee-houſe.

That

That he went with Mr *Bateman* to the *Duke* of *Monmouth*'s House; and after he had had some discourse with one of the *Duke's Servants*; he came to him, and told him, the *Duke* was willing *to engage in the business*; and had Horses kept in the Country, to be in readiness, when matters should come to extremity.

That he the said *Lee* and *Mr B.* went to the *Devil-Tavern*; and there *Mr B.* proposed the seizing the *City*, *Tower*, *Savoy* and *Whitehall*, and *the King's Person*; And that *Mr B.* told him, at the *Half-Moon-Tavern* in *Aldersgate-street*, that if he could but see a Cloud as big as a Mans hand, he would not be wanting to employ his Interest.

That *Mr Bateman* had told him, that he intended to take an House near the *Tower*, to place Men in, in order to surprize it.

Just as likely a story as that of *Colledge's* Plot, in his single person, to seize the King at *Oxford*.

*Mr Bateman* objected to this evidence, that if he had been guilty of such discourse, he had been fit for *Bedlam*; and if *Lee* had heard him speak such words, he wondered he had not sooner accused him.

*Richard Goodenough* then witnessed, that in discourse with *Mr B.* at the *King's Head*-Tavern in *Swithens Alley*, about the intended *Insurrection*, *M. B.* promised to use his interest in raising Men; and to be assisting in surprizing the *City*, *Savoy*, *&c.* and in driving the *Guards* out of Town.

*Mr Bateman* having subpenaed *Sr William Turner*, to give an Account of an *Information*, given in upon Oath before him; by one *Baker*, above two Years before; that *Lee* would have suborned him against the *Prisoner*; *Sr William* would testifie nothing thereof, but said, that it being above two Years since, he could not charge his memory, with any of the particulars contained therein.

*Mr Tomkins*, Sr *William Turner's Clerk*, being askt about *Baker's Information*, said, there was such an Examination taken, *Anno* 1683; but, to the best of his remembrance, it was returned before the *King* and *Council*; and he could not give any account of the particulars.

*Baker* being called, declared, That being in *Lee's* company, in the year 1683, *Lee* would have perswaded him, to insinuate himself into *Mr Bateman's* compa[illegible]

company; and he demanding of *Lee*, to what end he ſhould do it, and about what he ſhould diſcourſe; *Lee* told him, he might talk *about State matters, and by that means he would find a way to make him a great Man*, and *Baker* teſtifi'd, he was examin'd about this, before *Sr William T.*

*Lee*, by theſe horrid practices, made himſelf a great Man, being put into the place of a Meſſenger, which he enjoyed till of late, tho' ſome time before he became a Witneſs, he borrowed Money to buy Bread for his Family.

The *Court*, upon this Evidence, declared, that what *Baker* ſaid, was nothing to the purpoſe, but that *Lee* had a deſign therein, to make a diſcovery of the *Conſpiracy*, if he could have procured a Witneſs to corroborate his Evidence.

A wicked, but cuſtomary practice of that day, to abet and juſtifie Suborners and Trapans.

The *Jury* being ſent out, without Heſitation, brought *Mr Bateman* in guilty of the *Treaſon*, (tho' 'tis certain King *Charles* laught at *Lee*'s evidence.)

It being demanded of *Mr B.* what he had to ſay, why *Judgment* ſhould not be pronounced; He deſired to know whether *Mr Goodenough* was fully pardoned; and he was anſwered, that as for the

*Out-*

*Outlawry*, he was pardoned; and for any thing else, he was not prosecuted; and then, he was condemned, and was executed upon the 18th of *December*, 1685.

That the matter relating to *Sr William Turner*, may appear in it its true Light; I shall subjoyn the following accompt thereof.

Mr *Batemans Son*, having (as he thought) very providentially heard, that *Baker* had, about two Years before, given an *Information*, upon Oath, to *Sr William Turner*, of the *Villain Lee's* tampering with him, to ensnare and accuse *Mr Bateman*; The *Son* was advised by *Counsel*, to apply himself to *Sr William*; and in several attendances upon him, when he was engaged in other matters, and his Books of Entries lay upon his Table; he turning over the Leaves, found the Entry of *Baker's Information*, about *Lee's* attempting to suborn him, against Mr *Bateman*.

The *Son* thereupon, in the first place, applied to *Tomkins*, Sr *William's Clerk*, to get a Copy of that *Information*; and did once think him inclined to let him have it; but at last, he told him he must ask *Sr William*: Thereupon he applied himself

ſelf to *Sr William* for it, who demanded of him, *Whether it were againſt the King*; and *young Mr Bateman* anſwered him, *No*; *it may ſave the Life of one of his Subjects*; whereupon *Sr William* ſaid, *You ſhall not have it.*

The only Refuge then was, to ſubpena *Sr William Turner*, and his *Clerk*; which was done; and *Sr William* being examined, & ſaying, he could not charge his Memory with any of the particulars in the Information of *Baker*; young *Mr Bateman* ſaid, Let the Book be ſent for, it is in ſuch a Book, and ſuch a Page.

Whereupon, *Herbert* the *Chief Juſtice* in a paſſion, commanded young Mr *Bateman* to be removed out of the Court, as he was.

If the truth of what is here related, in reference to *Sr William Turner*, be any way doubted, it will evidently, and beyond controul appear, by the Proceedings before the *Houſe of Lords*, where it hath been very lately made out, by *Mr Bateman's Son*, and alſo by another Witneſs, who was privy to the whole tranſaction thereof, with *Sr William Turner*.

Mr *Bateman* being thus condemned to Death, by the foregoing wicked Practi-

ces;

ces; expreſſed himſelf thus to his Son, *Richard, Your Father needs not to dye, if he will accuſe others, but he dyes becauſe he will not be a Rogue.* And 'twas moſt undoubtedly true, as 'tis, that a greater Rogue lives not, than this *Lee*, (Mr *Bateman's* firſt Accuſer) who having miſcarried in his curſed Attempt to ſuborn *Baker*, is now ſeconded by *Goodenough*, who was brought with a *Halter* (in effect) about his Neck, to ſwear this good Man out of his Life.

In relation to the Witneſſes and their Evidence, ſome things deſerve to be further remarked.

The late *King James* had no ſooner poſſeſſed himſelf of the Throne, but by his order, and ſpecial recommendation, a moſt malitious Tract was emitted to the World, under the Title of *A true Account and Declaration of the horrid Conſpiracy againſt the late* King, *his preſent* Majeſty, *and the* Government; The temporizing *Pen-man* (who ever he was) ſhewed more Art than Honeſty, in compiling that Hiſtory, and omitted nothing therein, which might ſerve the turn of *Popery*; but moſt wickedly magnified

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the Evidence of the *Conspiracy* he treated of. His loose and virulent Pen runs thus, as to *Keeling*, one of the Witnesses in the case before us;

Josia Keeling (*a most perverse Fanatick*) *was the Man whom God chose to make the first discoverer; It pleased the divine Goodness so to touch his Soul, that he could not rest till after much conflict in his mind, he had fully determined to discharge his Conscience of the Hellish Secret.*

Now the truth of it is, *Keeling* was found, about that time, to be under some Conflict; but it was with *Satan* and his *Instruments*; who quickly vanquished and made him a Witness; as hath been lately made out beyond contradiction; by the Testimony of many unblemished Persons, before the *House* of *Lords* (of which more in it is proper place) he had indeed before that time, frequented an Assembly of *Christians*, who dissented from the *Church* of *England*; but being thrown out (*as a perverse Fanatick*) he made his way by a Profligate Fellow, like himself, one *Peckham*; to Sr *Leoline Jenkins* the Secretary of State, who listed him of his *Church*, and the first in his Roll of *Witnesses*; and since he became so,

'tis

'tis notoriously known, that he hath given up himself to all manner of Vices, and is a prophane lewd *debauchee*.

This *Keeling* is brought in as the first Witness against *Mr Bateman*; tho' his Evidence, touch'd him no more in Law, than it did every of the Jury-men; and it is remarkable, that in the four Informations, which he at several times gave in to *Jenkins*, Mr *Bateman* is not so much as once named, and yet we here find *Keeling* a witness against him.

Page 1. &c. of the true Account, &c.

The fore-mentioned bitter and malitious History doth likewise present us at large, (as it did *Keeling*'s) with the Information of *Lee* the *dyer*, against *Mr Bateman*; therein *Lee* swears, that he told *Mr B.* a story he had from *Goodenough*, of our Rights and Priviledges being invaded; and that some *Gentlemen* had taken into consideration, how to retrive them, &c. That *Mr Bateman* thereupon told him, he must have a care, and speak at a great distance; that he was willing to assist, *if he could see but a Cloud as big as a Man's hand*; And that *Mr B.* told him, that the *Duke* of *Monmouth*

Page 34. of the true Account, &c.

*mouth* told him the ſaid *Mr B. that he was glad that he came acquainted with thoſe* Proteſtant Lords; and that *Mr B.* aſſured *Lee*, that the *Duke was very right for the* Proteſtant Intereſt; *and that we need not miſtruſt him*; And *Lee* added, in that *Information*, *That* Goodenough *told him, that they muſt ſeize the Tower, and take the City, and ſecure the* Savoy *and* Whitehall, *and the King and the Duke.*

The Caſe, as to poor *Mr Bateman*, was much altered, between the time of *Lee*'s giving the foregoing Information, and this Tryal; for at firſt, the *managers* were for hanging *Goodenough*, (of whom, the Author of *the True Account*, pag. 55. ſaith, that he, with monſtrous Impiety, maintained and recommended the Murder of the King and the Duke, as a pious deſign, and a keeping of one of the ten Commandments, and the beſt way to prevent ſhedding *Chriſtian* Blood) rather than *Bateman*; and to that end, *Lee's* main force was then bent againſt *Goodenough*; but now, it being found, that *Goodenough* (and the City-*Juries* of that day) could hang Alderman *Corniſh* and *Bateman* (and alſo Sr *Robert Peyton* could they have catcht him) the ſtory,

*of*

*of a Cloud as big as a man's Hand*, is expatiated, and breaks in a dreadful ſtorm upon Mr *B.* That, of the *Duke* of *Monmouth's* being right for the *Proteſtant Intereſt*, is now mightily improved; and *Bateman* made to have ſaid, *The* Duke *would engage in the buſineſs, and had Horſes in readineſs*, &c. And, that he the ſaid *Bateman, would take an Houſe near the* Tower, *in order to ſurprize it*, &c.

As matters were at firſt concerted, the Evidence ran thus, *Goodenough* told *Lee, that they muſt ſeize and ſecure the* Tower, *the* City, *the* Savoy, Whitehall, *the* King *and the* Duke; Now *Lee* ſwears (and *Goodenough* backs him in it) that all this diſcourſe of ſeizing and ſecuring, *&c.* proceeded from Mr *Bateman*.

To conclude, the whole was a helliſh Contrivance to deſtroy the moſt valuable men of the Age, and with them the *Proteſtant Religion*; and the wicked *Hiſtory* I have mentioned, is a lying & moſt malitious *Libel*, upon the great and noble Names and Families of the *D.* of *Monmouth*, the *Earls* of *Bedford*, *Leiceſter*, *Eſſex*, *Shafteſbury*, *Argyle*, and others; and alſo upon the preſent learn'd *Biſhop* of *Salisbury*; and therefore, ſeeing that *Author* doth

doth not unwrite it, 'tis pitty that 'tis not condemned to be burnt by the hands of the *Common-Hangman*; And should it receive that deserved Sentence, the *Executioner* is hereby advertised, that he may find the Book in Custody (unless escaped since the *Prince* of *Orange's* Landing) and also in Irons; it being affixed, (very fairly bound) with a Chain (*not far from Newgate*) at *Sadlers Hall*; with an Inscription on the Title Page; *The Gift of* Mr Nott *of the* Pall Mall.

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Remarks upon the Tryal of the Right Honourable *Henry Lord Delamere*, upon the 14th Day of *January* 1685. Before the *Lord Jeffryes*, Lord High *Steward* on that occasion.

SOon after the defeat of the *Duke* of *Monmouth*, in the Year 1685, a *Proclamation* was issued, requiring my *Lord Delamere* to render himself, which his *Lordship* accordingly did; and upon the 26th of *July* 1685, the *Earl* of *Sunderland*,

derland, *Secretary* of *State*, committed him to the Tower for *high Treason*.

The *Parliament* sitting in *November* following, the House of *Lords* began to enquire into his *Lordship's* case, but were quickly after prorogued to the 10th of *February* following, and never sate more.

The *County Palatine* of *Chester*, did, at that time, furnish the *Conspirators* with as good *Juries*, as could be pack'd in the *City* of *London*, by *Sr John Moore's Sheriffs*; as is well known to the right honourable the *Earl* of *Macclesfield*, my *Lord Delamere*, *Sr Robert Cotton*, and many other eminently deserving *Patriots* of *Cheshire*.

Thither, was a *Commission* of *Oyer* and *Terminer* speeded, and an *Indictment* was preferred against his *Lordship*, before Sr *Edward Lutwich*, Chief Justice of *Chester*, and the Bill was readily found against him, by a well prepared and instructed *Grand-Jury*. Thereupon his *Lordship* was brought to *Tryal*, before the *Lord Jeffryes*, *High Steward*, and the following Peers (*viz.*)

*Laurence*, Earl of *Rochester*, *Lord high Treasurer of England*.

Robert

*Robert*, Earl of *Sunderland*, *Lord Preſident of the Council.*

*Henry*, Duke of *Norfolk*, *Earl Marſhal of England.*

*James*, Duke of *Ormond*, *Lord Steward of the Houſhold.*

*Charles*, Duke of *Somerſet.*

*Chriſtopher*, Duke of *Albemarle.*

*Henry*, Duke of *Grafton.*

*Henry*, Duke of *Beaufort*, *Lord Preſident of Wales.*

*John*, Earl of *Mulgrave*, *Lord Chamberlain of the Houſhold.*

*Aubery*, Earl of *Oxford.*

*Charles*, Earl of *Shrewsbury.*

*Theophilus*, E. of *Huntington.*

*Thomas*, E. of *Pembrooke.*

*John*, E. of *Bridgewater.*

*Henry*, E. of *Peterborow.*

*Robert*, E. of *Scarſdale.*

*William* E. of *Craven.*

*Richard*, E. of *Burlington.*

*Lewis* E. of *Feverſham.*

*George*, E. of *Berkley.*

*Daniel*, E. of *Nottingham.*

*Thomas*, E. of *Plymouth.*

*Thomas* Viſcount *Fanconberg.*

*Francis* Viſcount *Newport*, *Treaſurer of the Houſhold.*

*Robert*, Lord *Ferrers*.
*Vere Eſſex*, Lord *Cromwell*.
*William*, Lord *Maynard*, *Comptroller of the Houſhold*.
*George*, Lord *Dartmouth*, *Maſter General of the Ordnance*.
*Sidney*, Lord *Godolphin*.
*John*, Lord *Churchill*.

Who being called over, and appearing, the *High Steward* began thus;

My *Lord Delamere*, you ſtand indicted of *High Treaſon*, by a Bill found againſt you, by *Gentlemen* of *great Quality* and *known Integrity*, within the County Palatine of *Cheſter*, the place of your reſidence, and the *King* has thought it neceſſary, to order you a ſpeedy *Tryal*.

*My Lord*, if you know your ſelf innocent, do not deſpond, *For you may be aſſured of a fair and patient hearing*; and a free liberty to make your full defence.

A Complement which *Jeffryes* never put upon any Man before.

He then ordered the *Indictment* to be read, which was to this effect, (*viz.*)

That my *Lord D.* as a *Traytor* againſt *King James* the ſecond, the 14th of *April* laſt, conſpired, with other *Traytors*, the *depoſing and death of the* King, and did tray-

*traytorously assemble, consult and agree with the* Lord Brandon *and other* Traytors, *to raise Money, and procure* Armed Men, *to make a* Rebellion, *and to seize the* City *and* Castle *of* Chester, *with the* Magazines; *and that upon the* 27*th of* May, *he took a Journey from* London, *to* Mere, *to accomplish his Treasonable intentions; and that upon the* 4*th of* June, *he incited divers to joyn with him in his* Treason.

To this *Indictment* his Lordship pleaded *Not Guilty.*

*Jeffryes* then addressed himself to the *Lords*, to this effect; *That their* Lordships *could not but remember the insolent Attempts made upon the unalienable* Succession *to the* Crown, *under the spetious pretence of* Religion, *by the fierce, froward and Fanatical Zeal of some of the* Commons, which had been often found the occasion of *Rebellion.*

*Note*, my Lord *Delamere* was at that time in the House of Commons, and a great Promoter of the Bill of Exclusion.

That, that not prevailing, the *Chief Contrivers* of that horrid *Villany*, consulted how to gain the advantage by open force; and in order thereto, had several Treasonable Meetings, *made bold and*

riotous * *Progresses in several parts of the* Kingdom, to debauch the minds of the well-meaning, tho' unwary part of the *King's Subjects.*

* The Duke of *Monmouth's* progress into *Cheshire* & the West.

That *God* frustrated their evil purposes, by bringing to Light that *cursed Conspiracy*, against the Life of the late *King* and his present *Majesty.*

That one would have thought, these *hellish* and *damnable Plots*, could not have survived the just Condemnation and Execution of some of the † *Chief Contrivers* of them; especially considering, that no sooner the present *King* was seated in his *Throne*, but he endeavoured to convince the world, *that he had quite forgot those impudent and abominable Indignities, that had been put upon him, only for being the best of* Subjects, *and best of* Brothers; *and also gave the most benign Assurances imaginable, that he would approve himself the best of* Kings.

† Innuendo, Lord *Russel*, Col. *Sidney*, &c.

And, to evince the reality of his gracious Resolutions, *he called a* Parliament, *and there repeated, and solemnly confirmed,*

his

*his former* Royal Declarations, *of having a particular care of maintaining our* Eſtabliſhed Laws *and* Religion.

And yet, at that Juncture, that wicked and unnatural *Rebellion* broke out; and thereupon, the *Arch-Traytor Monmouth*, was, by a Bill brought in the *lower Houſe*, and paſſed by the general conſent in both Houſes, *and I could wiſh, my Lords, for the ſake of that* Noble Lord *at the Bar, that I could ſay, it had paſſed with the conſent of every particular* * *Member of each Houſe*) juſtly attainted of *High Treaſon.*

* The Lords are here told, that my Lord *Delamere* oppoſed the Bill to attaint the D. of *Monmouth.*

After this harangue, he concluded thus, *My Lords*, what ſhare *my Lord* at the Bar had in thoſe other matters, I muſt acquaint you, is not within the compaſs of this Indictment, for which you are to try him; for that is a *Treaſon*, alledged to have been committed, in the preſent *King's* Reign.

To what end then, was this malitious Tale told?

Then *Sr Tho. Jenner*, the *Recorder* of *London* opened the *Indictment.*

The *Attorney General* then aggravated the Charge, saying; We crave leave to give a short Account of a former * *design*; ——— *Cheshire*, the Province of this *Noble Lord*, was one of the Stages, where that *Rebellion* was principally to be acted; and preparatory to it, *great Riotous Assemblies and Tumultuous Gatherings of the People*, were set on foot by the *Conspirators*.

* The Plot in 1683.

We shall prove, that a little before the *Rebels* came over, this last *Summer*, the *Duke* of *Monmouth* dispatched one *Jones* into *England*, to let his Friends know, that tho' he had intended to go into *Scotland*, and begin there, he was resolved for *England*; with this he was to acquaint some *Lords*, particularly the *Prisoner*; And also to acquaint them, that they should have notice four or five days before, of the place of his Landing, and that then the *Lords* should repaire immediately into *Cheshire*, there to wait for the News.

We shall give you an account, that the late *Duke* of *Monmouth* lookt upon *Cheshire* as one of his main supports; and upon my *Lord Delamere*, as a principal *Assistant* there. *Jones*

*Jones* was to communicate his Meſſage to *Captain Mathews*, who was to tranſmit it to this *Lord*, and thoſe concerned with him; *Jones* arrived upon the 27th of *May*, but *Mathews*, (nor *Major Wildman*, to whom he was to apply, in the abſence of *Mathews*) was not to be found; Thereupon he ſends for one *Diſney*, ſince executed for *Treaſon*, and one *Brand*, whom your *Lordſhips* will hear of; and communicates his Meſſage to them, and they undertake to deliver it to the Perſons concerned.

That very night, *My Lord*, this ſame *Brand* & *Diſney* met this *Noble Lord*, and *give him an account of the Meſſage*; and as ſoon as ever he received it, upon the 27th of *May*, at ten at Night, my Lord diſpatches out of *Town*, with only one Servant, and two other Friends that he had *pick'd up*.

*With all theſe Badges of Plot and Deſign*, does my *Lord Delamere* ſet out, the ſame night *Jones* came to Town; he choſe to go all the By-Roads, and went with great ſpeed, to repair into *Cheſhire*, by the name of *Brown*, by which he was known among all his own Party; by that name, ſeveral of the late *Duke* of

*Monmouth's*

*Monmouth's Trayterous Declarations*, were sent for, to be sent to him, or by him into *Cheshire*.

When he comes into *Cheshire*, he actually sets about the work, to put that County in a forwardness, to assist in the *Rebellion*; endeavours to stir up the People to joyn with him; *and acquaints one that he employed in that Affair, that he was engaged to raise so many Thousand Men, and so much Money to be ready by such a day.*

This means the impudent, but *ridiculous Story* of *Saxon*, which could never obtain upon any, but the Credulous Prosecutors of this Noble Lord, who were disposed to believe any thing.

My Lords, *We shall plainly shew you all this in plain proof.*

Then Mr *Attorney* called their old *Drudge* at swearing, my Lord *H.* of *E.* and demanded of him, his oft repeated History, of a design of an *Insurrection*, that was to have been, in the late *King's* time, and what share *Cheshire* was to have in it?

The *Lord H.* told his thrid-bare history of the *Plot*, in 1682, and 1683; but not a word of *Cheshire*; and said, that he knew nothing concerning my *Lord Delamere*. Tho

The Lord *Grey* was then called, and said, That about the time of the contested Election of Sheriffs, The *Duke* of *Monmouth* and *Earl* of *Shaftesbury*, resolved, that they would make what interest they could, to procure a *Rising* in three several parts of the *Kingdom* at once; one in *Cheshire*, whether the *Duke* of *Monmouth* was to betake himself, and *there to be advised by my* Lord Macclesfield, *my* Lord Brandon, *my* Lord Delamere *that then was, and the* Prisoner; what *Gentlemen* to apply to, for joyning in the *Design*; The second was in *London*, which was assigned to be the *Province* of my Lord *Shaftesbury*; and the third in the *West*, under the care of my Lord *Russell*, and that the *Duke* accordingly, went his *Progress* into *Cheshire*.

That soon after Mr *Crag* came over to *Holland*, (as I was informed) from *Major Wildman*, and gave an account that Men and Money were prepared; thereupon, the *Duke* sent over *Captain Mathews*, to *Major Wildman*, to desire him to meet with my Lord *Macclesfield*, Lord *Brandon*, Lord *Delamere*, and I think Mr *Charleton*; and acquaint them, that he had ordered his own Affairs, to

joyn

joyn with the *Earl* of *Argyle*.

He likwiſe ſent *Crag* with a Meſſage to the ſame purpoſe, to other Friends in *London*; and he diſpatched away one *Battiſcombe*, into the *Weſt*, to prepare things there.

When *Crag* returned to the *Duke*, he gave him an account, that *Major Wildman* had procured a Meeting with thoſe *Lords* and *Gentlemen*, who were all of opinion, that the *Duke* ſhould go for *Scotland*; That *Crag* ſaid the *Priſoner* was there. There was alſo a particular Meſſage from Major *Wildman* to the *Duke*, that he deſired, he would bring over with him a *Broad Seal*, to ſeal *Commiſſions* with; *And would take upon him the Title of King*——

*Jones* came ſome time after *Crag* returned, and gave an account of other things, conformable to what *Crag* had ſaid, and was ſent again to *England* by the *Duke*, to give an account that he was ready to Sail, and would land by that time he could get thither.

The *Attorney General* demanded of the Lord *Grey*, upon whoſe aſſiſtance the *Duke* of *Monmouth* relied.

He anſwered, I ſuppoſe few will believe

eve we were so weary of our Lives, to come and throw them away with hreescore, or a few more, Men; except we had expectation of good Assistance——The *Duke* did very much depend upon *Cheshire*, and upon my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*.

Mr *Nathaniel Wade* being sworn, testified, that after the death of *King Charles*, Captain *Mathews* came to *Amsterdam*, and brought word that the Duke of *Monmouth* would shortly come hither, to consult with my Lord *Argyle*; and thereupon Mr *Wade* was sent into *Friezland*, to desire the *Earl* of *Argyle* to come to *Amsterdam*, which he did.

That the *Duke* and his *Lordship*, having concerted matters, the *Duke* sent Captain *Mathews* to *England*; who amongst other things, was to go to the Duke's Friends in *Cheshire*, amongst whom my Lord *Delamere* was named; and the business was, to desire them to assist him when he should land.

That a little after Captain *Mathews* went, *Crag* came over from *Major Wildman*, to desire them to endeavour a good understanding between the *Duke* and

*Argyle*,

*Argyle*, who were then at some difference; That a little after, he was sent back to Major *Wildman*, *to desire him to assist them with some Money*; and he went and returned, but *brought no Money*; that thereupon, *Crag* was sent again by the *Duke*; because he did not send him at first; the summ demanded was 6000 *l.* or 4000 *l.* and *at last he sent for* 1000 *l.*

That *Crag* returned with answer, *that they could not assist them with Money*, for that they did not know, to what end they should have Money, but to buy Arms, and for that the People were well provided already. Whereupon the *Duke* sent *Crag*, and *pawned all his Jewels*, and fitted out three *Ships*, laden with Ammunition; and resolved to go for *England*, having so promised the *Earl* of *Argyle*; and desired (by Mr *Crag*) that since the *Lords* and *Gentlemen* who were to assist him, had sent no Money; they should repair into their own Countries, to be ready when he should come.

That after the *Duke Landed*, he so ordered his *March*, as most conveniently to meet his *Cheshire Friends*; and in pursuance of it, They came to *Keinsham-Bridge*, where a Party of the *King's*

*Horse*

*Horse* set upon them, and the *Duke's* Party took some Prisoners; but went not over the *Bridge*, thinking it advisable, not to let the *King's Army* joyn, but to go back and engage those that were come together.

That before *Crag's* going last away, *Jones* came over, to know why *We* stay'd so long; and he was dispatched to acquaint them, the *Duke* was coming; and was directed to *Major Wildman*; and amongst the rest, to my Lord *Delamere*, my Lord *Macclesfield*, and my Lord *Brandon*, to raise what Forces they could to assist him.

My Lord *Delamere* then declared, that he had never seen Mr *Wade's* face.

Then *Richard Goodenough* witnessed, That Mr *Jones* was sent to my Lord *Delamere*, to give him notice to be ready against the *Duke's* Landing; and to take care to secure himself, that he might not be seized in Town.

That they were informed in *Holland*, that my Lord *Delamere* was one of the Lords, that had *promised to draw his Sword in the Duke's behalf*; and that the *Duke* told him, that he hoped my Lord *Delamere* would not break his promise with him.

The

The *High Steward* said, My Lord *Delamere*, will you ask him any Questions?

My Lord *Delamere* answer'd, *No* my Lord, *I never saw his face before.*

The *High Steward* replyed, That is pretty strange, so famous an Under-Sheriff of *London* and *Middlesex*, as he was.

Mr *Jones* being next sworn, testified, That he went to *Holland* (where he had business) about the latter end of *April* last.

That Mr *Disney* had darkly communicated to him, that there were intentions of doing something; and desiring to know more of the Design, the night before he went, he acquainted *Disney* with his intended Journey, and that he intended to see the *Duke* of *Monmouth*, and if he had any Message to him, he would deliver it safely.

That Mr *Disney* told him all the Message he should deliver, was, To desire the *Duke* to keep to the last conclusion, which he would find in a Letter, that had been sent to him, by the *Crop-hair'd Merchant*; which Message was, That the *Duke*'s Friends, would not by any means have him come for *England*, but

to

to continue where he was; or if he thought fit to go for *Scotland* they approved it.

That when *Jones* came to the *Duke*, and delivered the Message, he was in a great Passion, and reflected very much on *Major Wildman*, and said, 'twas too late to send such a Message now, for he was resolved to come for *England*, and would make *Wildman Hang with him, or Fight for it*, with him; That *Wildman* did think by tying his own Purse, to tye his Hands, but he should find it should not be so.

That the *Duke* told him, Money was very short, *and he had pawned all he had, to raise what Money was raised*; That he would be glad *Jones* should return to *England*, as soon as he could; and that he should tell *Wildman*, that he would come for *England*, and he should either Fight with him, or Hang with him; and that was all he had to say to him.

That going again to the *Duke*, the same evening, he told him he would have him stay till Tuesday morning; That then (the *Duke* being gone out of Town) the Lord *Grey* told *Jones* from the *Duke*; That he intended to be in

*England* within nine days; and bid him remember to tell *Brand*, *that when he heard the* Duke *was Landed, he should acquaint* Sr Robert Peyton *with it, but not till he was Landed.*

That *Jones* missing passage to *England* from *Roterdam*, he returned to *Amsterdam*, and went to the *Duke*, and told him the reason why he was not gone; and the *Duke* said he was glad he was not gone, for he had a further Message, and would have him stay two or three days.

That upon the 21st of *May*, the *Duke* ordered him to come to him in the Evening, and when he came, the *Duke* took a Paper that lay upon the Table, and sealed it, and told him, that when he came to *London*, he must see for *Captain Mathews*, and desire him to acquaint my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*, that he was resolved to set out the next *Saturday* morning.

That the *Duke* then said, that *Mathews* was to send one Post to that place that was named in the Note, to receive Intelligence of his Landing; and that News he desigued, should be brought to his Friends here, 24. hours before

the Court had notice of it; and those *Lords* were to be in readiness, and as soon as they knew he was Landed, they were to repair to their Posts to assist him.

That *Jones* askt the *Duke*, what he was to do with the Paper, who said, I do by you, as *Princes* do by their *Admirals*, they have their Commissions sealed up, and not to open them till at Sea; so I deliver your Instructions sealed up, which you are not to open till you are at Sea; and when you have opened and read what is contained in them, I would have you tear the Paper, and throw it into the Sea, least you be surprized and searched at your Landing; And that the *Duke* ordered him, that if he missed of *Captain Mathews*, he should deliver the Message to Major *Wildman*.

That the Instructions in the Paper were to this effect, (*viz.*)

"Taunton *is the place to which all are to resort, The Persons to be acquainted with the time of Landing are the* Lord Macclesfield, *the* Lord Brandon, *and the* Lord Delamere. *The place to send the Coach to, is to* Mr Savage's, *the* Red Lyon; *The Post is to return to* Captain Mathews, *or as he shall appoint.*

*Jones* added, that he came home the 27th of *May*, (the *Wednesday* forthnight before the *Duke* Landed) and *Disney* came immediately to him, and told him, that Captain *Mathews* and Major *Wildman* were both out of Town; whereupon he delivered the Message to *Disney*, and left it to him to convey it to the *Lords* concerned.

That *Disney* met him the same night in *Smithfield*, with Mr *Crag*, Mr *Lisle*, and Mr *Brand*; and *Disney* took *Jones* and *Brand* aside, and askt *Jones*, what was the place to which the Post was to go.

That *Jones* met the *Duke* at *Lyme*, and told him what he had done with the Message, who said he was satisfied he had done what he could, but seemed troubled that *Mathews* was out of Town.

It being demanded of my Lord *Delamere*, whether he would ask *Jones* any Questions, his Lordship answered, No, I never saw his face before.

Mr *Story*. (the *Duke* of *Monmouth's Commissary General*) testified, that Mr *Brand* (*who lived about* Bishopsgate, *and was killed at* Keinsham Bridge) told him, upon the 28*th* of *May* last; that Mr *Jones* was returned from *Holland*, and brought

a Meſſage from the *Duke, and that he the ſaid* Brand *was to go to* Taunton, *to expect, from* Mr Dare *or* Mr Williams, *the account of the Duke's Landing.*

That *Brand* told him, that *Jones* his Meſſage was delivered to *Diſney*, who went and had ſome diſcourſe with my Lord *Delamere*, and that that night, his Lordſhip went out of Town, and two Friends of Mr *Brand's* went with him, and conveyed him by a By-way, through *Enfield-Chaſe*, towards *Hatfield.*

That *Story* went out of Town, the 28th of *may*, and overtook *Brand* that night; That he heard the *Duke* of *Monmouth* ſay at *Shepton-mallet, that his great dependance was upon my* Lord Delamere *& his Friends in* Cheſhire; but he was afraid they had failed him; and he ſaid, he could have been ſupplied otherwiſe, but that he had a dependance upon them.

My Lord *Delamere* then demanded of *Story*, whether he knew one *Thomas Saxon.*

Mr *Story* anſwered, yes, my Lord, I was a Priſoner with him in *Dorcheſter Priſon.*

The *Attorney General* then called *Vaux*, and ſaid, My *Lord*, this is an unwilling

willing Witneſs, and we are forced to pump all out of him by Queſtions. And then demanded of him, what day it was my Lord *Delamere* ſent for him.

*Vaux* anſwered, It was the 26th of *May*, his Lordſhip ſent for me to the *Rummer Tavern* in *Queen-ſtreet*; and the next day I went out of Town with him, about nine or ten in the Evening; My Lord went by the name of *Brown*; We got to *Hoddeſden* about twelve at night.

Mr *Attorney* demanded whether they went next; whether my Lord *Delamere* was going; and whether that was the direct Road to *Cheſhire*?

Mr *Vaux* anſwered, We then went to *Hitchin*, and I returned home the next day; My *Lord* was going to ſee his Son, who was ſick in the Country, and we made that the way, it being the freeſt Road from Duſt.

Mr *Edlin* then teſtified the ſame in ſubſtance with Mr *Vaux*, that upon the 27th of *May*, he went with my Lord *Delamere* to *Hoddeſden*, &c.

Mr *Attorney* then ſaid, my Lord, to confirm and explain this Evidence, I ſhall prove, that this *Gentleman* went by the name of *Brown*, *in the Cars of thoſe*

that

*that were engaged in this Busines*; that the name was known as his name, by all the Party, and called so constantly in their Letters and Messages.

*Tracey Paunchforth* being called, witnessed, That he was at *Disney's* house, the 14*th* of *June*, with *Joshua Lock*, one *Hooper*, and one *Horsley*; and *Lock* stayed for some of the *Duke* of *Monmouth's Declarations*, which were finished about nine of the Clock, and three were delivered to him; and there was a discourse of having them sent into *Cheshire*, to one Mr *Brown*, whom he understood to be my Lord *Delamere*; and Mr *Disney* used to mention him by the name of *Brown*.

That *Paunchforth* was at the *Castle Tavern*, with Mr *Vermuyden*, his Brother *Babington*, and Mr *Manning*: but there was no mention (as he remembers) of my Lord, or Mr *Brown*, but only something in relation to the *Duke's* Landing; & Mr *Vermuyden* (who also went by the name of *Brown*) said, he did not know where he was to Land.

*Babington* (*the Betrayer of that worthy Gentlemen* Mr Disney) then swore, That when he first knew of any of the Tran-

factions, he was with Mr *Vermuyden*, his Brother *Paunshforth*, and Mr *Chadwick*; where there was discourse of Mr *Brown*, and that his Uncle *Vermuyden* afterwards told him, it was my Lord *Delamere*; and ordered him to call my Lord by that name.

That he was at Mr *Disney*'s, over the water, with *Paunshforth*, and *Horsley*; and *Disney* shewed him a *Declaration* tha was not quite perfected; and some body said, some of the *Declarations* were to be sent to my Lord *Delamere*; and Mr *Disney* said he was afraid my Lord *Delamere* was not capable of doing that Service that was expected from him in *Cheshire*, for want of some of those *Declarations*, which would be mighty useful to inform the People. And that *Disney* said, he hoped to have 500 Printed in twenty four hours, and a good number of them were to be sent to my Lord *Delamere*.

*Non hospes ab hospite tutus.*
Those who travel that Road, will do well to beware of such a Landlord, for he kept a Diary, and was a Spy upon this Noble Lord.

*Hope* (of the *three Tuns* in *Coventry*) then witnessed, that my Lord *Delamere* upon the *Sunday* before the *Coronation*, came Post to his House,

House, towards *Cheshire*; and sometime after that, he came down Post again; and a little after went up Post, and told him he went down another way: and upon the 21th of *June* (the *Sunday* sennight after the *D.* of *M.* landed) he came down Post again; and then his *Lordship* told him, that it was said the *Duke* of *Albemarle* was killed, and that the *D.* of *M.* had several Field Pieces, and Arms for near 30000 Men; and that his *Lordship* shewed him in a Mapp, which way *Monmouth* went; and pointed out such and such Towns, that he was possessed of; and withal said, *That he feared there would be many bloody Noses, before the business was at an end.*

Mr *Attorney* then called *Thomas Saxon*, & said, *Pray* Mr Saxon, *will you give an account what you know of my* Lord D. *the* Prisoner *at the* Bar, *concerning any Insurrection or Rebellion designed by him in* Cheshire, *and when?*

Their dependance was upon this well instructed Witness therefore he is Mr *Saxon*, & those before *him* were only *Wade, Jones, Vaux*, &c.

*Saxon* swore, that he was sent for to *Mere*, my *Lord Delamere's* House at the beginning of *June*, (he believes the third

or

or fourth day) and was conveyed into a lower Room, where were my *Lord D.* *Sr Robert Cotton*, and *Mr Crew Offley*; who told him, he was recomended to them by my *Lord Brandon*, who said, he was an honest useful Man, and they hoped he would prove so; For they had sent to the *D.* of *M.* and received an answer by *Jones*; and as soon as they had an answer, my *Lord D.* came down Post under another Name (being conveyed through *Moore-Fields*) to raise ten Thousand Men for the *D.* of *M.* in *Cheshire*, by the 1st of *June*, but they found they could not raise them till *Midsummer*, for they must have time to raise 40000*l.* in that Country, to maintain the Men.

That they askt him to undertake to carry a Message to the *D.* of *M.* and he told them he would; and my *Lord D.* gave him eleven *Guineas*, and 5*l.* in Silver for his Journey; and he went and delivered the Message to the *Duke*.

The *High Steward* demanded of *Saxon*, how he came to be recommended to them

* His Lordship was well appriſed of the Answer their Witness would make, and to them who discern it, in this Que-

them, by my *Lord Brandon*; & whether he were acquainted with my *Lord Brandon*? [*Saxon tho' a very willing Witness, had forgot to tell the Story of drinking Ale with my* Lord Brandon; *and therefore, the* Monster, *then called his* Grace, *pumps it out by this Question.*] *Saxon* (knowing what my Lord wanted) answered, I was acquainted with him; the first time I was with him, was at *Over*; the next time was at my *Lord's* House.

The *Attorney General* thereupon said, *Ay, pray tell my* Lord, *how you became acquainted with my* Lord Brandon.

*Saxon* said, Upon *Munday* in *Easter*-Week last, being at *Over*, my *Lord* sent for me, *to drink a Glass of Ale, and take a Pipe of Tobacco with him*; and when I came, *my Lord* told me, *he had a desire to be acquainted with me*; *so* We *drunk a considerable while*; and my *Lord* discoursed, how unfairly the *Elections* of *Parliament Men* had been carried; which had so exasperated the Country, that they were resolved to rise in *Arms*, *under pretence of maintaining the Christian English Liberties*,

tion, it may well seem strange, that they should bring this great Man to Tryal, upon such nauseating Evidence, as some had put into this Varlets Mouth.

*Libertie*s,

*Liberties*, and that they had a design to send for the *D.* of *M.* and make him *King*; and that *they must use such men as me*, that were Men of Interest in the Country, *to stir up the People to rise in Arms*; And if I would come the next *Munday* to his * House, he would tell me more of the business; and I went accordingly, and *he told me a great deal to the same purpose*, and shewed me a *Letter* that he had written to the *D.* of *M.* which I afterwards saw at *Bridgewater*.

* 'Twas happy that my Lord *Delamere never* took a *pipe* with this *Villain*, nor courted his Acquaintance.

My *Lord D.* then said, *I desire to know when was the first time that he declared this he has now sworn against me, and to whom?*

*Saxon* answer'd, *I suppose* I told Mr. *Storey* of it first, at *Dorchester*, after I was taken Prisoner for the Rebellion; and *I think* it was a fortnight, after my acquaintance with him, (I lay with him in the same Bed.)

My *Lord D.* demanded *when was the first time he made Oath of this, and upon what occasion?*

*Saxon* said, I remained a Prisoner at *Dorchester*, from the 10th of *July* to the beginning of the last *Term*, when I was re-

emoved to *Newgate*; and *I gave my first*
*formation before*
*is Majesties Coun-*
*llors, who were sent*
*to take my Exami-*
*nation, immediately after I was brought to*
Newgate.

My *Lord D.* then demanded, *Whether ever he had employed him about any of his Concerns, that should give him an occasion of trusting him with such Secrets?*

*Saxon* answer'd, *I never was in his company but only then*; and then, as recommended by my *Lord Brandon*; for they said, they must make use of such as me, to make their Designs known to the Country, for the accomplishing what they did intend.

I was to inform the Country of the time of Rising; my Acquaintance abounded that way; and by their discourse, they had got Men in every place, to acquaint the Country when they should rise.

My *Lord D.* then said, *I desire to know who was the Messenger was sent for him to my House?*

*Saxon* answer'd, *I askt his Name, but he would not tell me*; he said he was a

Tenant

* To instruct him, he would have said, but that it must be Perjury throughout.

Tenant to my *Lord*, and had been employed in such businesses for my *Lord's* Father *Sr George Booth*; he was a Lame Man in one Arm, for he had his Hand shot away at the Siege of *Nantwich*.

My *Lord D.* demanded what time of day or night it was, when he came to his House; and whether, when he came, he alighted at the Stables or not; and who took his Horse; and at what Door he was let in; and who let him into the House?

*Saxon* said, It was just when it began to be dark; that he alighted just at the Old Buildings; and that the Man that came with him, took his Horse; and he went into the House, and brought out a Candle; that he never was at the House before, and cannot tell which Door he went in at; That the Man went with him just to the Door, and let him within the Door; and *he saw no other man, but that man, till he came into the Room, where my Lord, and the two Gentlemen were.*

My *Lord D.* asked him, whether no body else but they were there?

*Saxon* answer'd. No; you were so wise, you would let no Body be by.

*Mr* Attorney then said, *My Lord*, We shall

shall give no more evidence at present, but shall rest here, till *We* see what defence this *Noble Lord* will make for himself.

*My Lord Delamere* then proceeded, saying, *May it please your Grace*, and you *my Lords*; It is an Offence of a very high nature for which I am this day to answer, before your *Lordships*; yet I thank *God*, I am not afraid to speak in this place, because I am not only very well assured of my own innocence, but also well assured of your *Lordships* Wisdom and Justice, which cannot be imposed upon, or surprized by *Insinuations and florid Harangues*, nor governed by any thing but the Justice of the Cause.

——I think that in matters relating to the *Church*, and the things injoyned therein, few have conformed more in practise, than I have done; and yet I am not asham'd to say, that *I have always a tenderness for all those who could not keep pace with me*; and *Charity* for those that have out-gone me, and differed from me, tho' never so far, nay, tho' of a *different Religion*; for I always thought *Religion lay more in Charity than Perfection*.——In every publick Trust, I was faithful in the

the discharge of it, for *I never voted nor spoke in any manner but as my Conscience and Judgment did dictate to me. I have always made the* Laws *the measure of my* Loyalty, ——— and have endeavoured as far as in me lay, to live peaceably with all men.

This, *my Lords*, was not only the dictates of my own Inclination, but it was *the Principle of my Father*, and the Lesson that he taught me——Whosoever did know him, I dare say did believe him to be a good Man. For my part, I endeavoured always to imitate his Example, and that I hope, will go very far, to vindicate me from the imputation of being inclined to any such Crime as I stand charged with.

Here have been a great many *Witnesses, and a great deal of Swearing*, but little or nothing of legal Evidence to affect me; for there is but one Man that saith any thing, home and positively against me; All the rest are but *Hear-says*, and such remote Circumstances as may be tack'd to any Evidence, against any other Person; but are urged against me, for want of greater matters to charge me with; and therefore, I hope the produced

ducing & preſſing of theſe things againſt me, is rather a ſtrong Argument that I am innocent, and that *there have been miſchievous and ill Deſigns of ſome againſt me*; than that I am guilty: *Had they had greater matters*, your Lordſhips *would have been ſure to have heard of them.*

My *Lord* of *Nottingham*, when he ſate in the ſame place, that your *Grace* does now, at the Tryal of my *Lord Cornwallis*, ſpeaking to the *Peers*, had this paſſage.

*I know your Lordſhips will weigh the fact with all its Circumſtances, from which it is to receive its true and its proper doom; your Lordſhips are too juſt, to let pity make any abatement for the Crime, and too wiſe, to ſuffer Rhetorick to make any Improvement of it; This only will be neceſſary to be obſerved by all your Lordſhips, That* the fouler the Crime is, the clearer and plainer ought the proof of it to be; *There is no other* * *good reaſon can be given, why the Law refuſeth to allow the Priſoner at the Bar Counſel, in matter*

* 'Tis then great pity that the Law, as to this is not altered, and every *Engliſh* man (who may have what Counſel he will, in a Cauſe of 40 *s.* value) allowed Counſel, when he is concerned for his Life.

*of Fact, when Life is concerned, but only this; because the Evidence, by which he is condemned, ought to be so very evident, and so plain, that all the Counsel in the World should not be able to answer it.*

*My Lords*, I think the Evidence given against me doth not come up to this; and I hope your *Lordships* will regard this of my *Lord Nottingham's*, as more worthy of your consideration, than the fine *Flourishings* and *Insinuations* of the *King's Council*, which tend (*if it be not so design'd*) rather *to misguide* your *Lordships*, than to lead you to find out the truth.

*My Lords*, I shall begin with *Saxon*, for he I perceive is the great *Goliah*, whose evidence is to maintain this *Accusation*, and if I cut him down, I suppose I shall be thought to have done my own business; I shall first call some of his Neighbours who have conversed with him, and know him.

My Lord *Delamere* then called Six Witnesses, who proved *Saxon* to be a very ill Man, and to have been guilty of Forgeries, and several Cheats.

That being done, his *Lordship* said, I

shall pass over this part of my Evidence, tho' I have many more Witnesses to this point, and come to matter of fact, to encounter this positive proof against me.

*Saxon* has testified, that about the 3d or 4th of *June*, he (*as an extraordinary Person, being confided in*) was sent for by me, to *Mare*, where he found me, *Sr Robert Cotton* and *Mr Offley*; *who employed him to transact the stiring up the Country, to rise and joyn with the* D. *of* M. Now I will prove, that Sr *Robert* was not in *Cheshire* for several Months, both before and after the time he speaks of; and I shall prove he was then in *London* at that time.

Mr *Billing* (Sr *Robert Cotton's* Steward) testified, that Sr *Robert* came to *London* the 10th of *April* last, and that he saw him constantly once or twice a day; That *about the end of July*, he went for three dayes to *Epsam*, and came to Town again, and continued here, till he was committed to the Tower, and never was in *Cheshire*, since the 6th of *April* last.

*Margaret Davis* witnessed, that Sr *Robert Cotton* came to Town the 10th of *April*, and has not been out of Town any night since, *except it were in August.*

The *Lord High Steward* catcht hold of this, saying, *You say he did not go out of Town till* † *August*; The other Man says, it was *the latter end of July*.

My *Lord Delamere* thereupon said, The other *Witness* saith, it was the latter end of *July*, and *that may be very well consistent, neither of them speaking to a day*.

† See here the vast difference between this Tryal, before an *August* Assembly, and the Tryals in that day, by Common Juries; had this petty difference of the end of *July*, and *August*; happen'd in an ordinary case (as the like did, in the Case of *Otes* his Perjury) what bawling would have been upon it; and had this Excellent Person, been upon his Tryal, before my Lord *Russel's* Jury, or Colonel *Sidney's* three Carpenters, with the Taylor, and their Crew; it might have been improved (by this Mushroom Lord *Jeffryes*, and the King's Counsel) to his Destruction.

*Mrs Sidney Lane* (who lived in Sr *Cotton's House*) testified, That *Sr Robert* came to Town in *April* last, and never lay out of Town all those Months of *April*, *May* and *June*, after he came to Town.

*Charles Reeves* (*Sr Robert's* Foot-man) testified, That Sr *Robert* was in Town before the *Coronation* (the 23d of *April*) and he saw him every day that time till after *July*.

Then, *Mr Ashburnham*, *Sr William Twisden* and *Mr Hevenyngham* witnessed, that they saw *Sr Robert Cotten* in Town

in *June*; *Mr Hevenningham*, in particular, that upon the 3d of *June*, he was walking with *Robert* in the *Court* of *Requests*, when *Mr Neale* came and told him, the *House* of *Commons* had then determined a point, about the *Election* of *Thetford*.

Sr *Willoughby Aston* then proved, that upon the 26th of *May*, Mr *Offley* and his *Lady* came to his House; and he gave a particular account, how he spent his time there till the 4th of *June*, when he returned home to his own House, which is directly another way from my *Lord Delamere's*, whose *House* is eleven of those Northern Miles from *Sr Willoughby's*.

Mr *Gregory* and *Tho. Kid* (Servants to Mr *Offley*) witnessed, that Mr *Offley* went from Sr *Willoughby Aston's*, upon the 4th of *June*, directly home to his own House, *Crew-Hall*, in *Cheshire*; and did not go from thence that night.

Mr *Booth* my Lord *Delamer's* Brother proved that he saw my Lord in Town, the 3d of *June* in the evening, and also the 4th, 5th, 6th, and so on to the 10th of *June*, sometimes twice or thrice a day.

Mr *George Booth*, another of my *Lord's Brothers* testified, that he saw my *Lord*

in Town, the 4th of *June*, by the particular circumstance, that he went with him, the next day, to the *House* of *Lords*, to hear my *Lord Macclesfield's* Cause upon *Fitton's* Appeale.

My *Lord Lovlace* proved that he saw my *Lord D.* in the *House* of *Lords*, at the hearing of my *Lord Macclesfield's* Cause (the 5th of *June*) and that my *Lord D.* stood by the Bar, and took notes.

My *Lord D.* then said, I hope I have now satisfied your *Grace*, and the rest of my *Lords*, that none of us three, whom this Fellow has mentioned, were at that time at *Mere*, when he said we were. I affirm in the presence of *Almighty God*, that I have not seen *Sr Robert Cotton* at my House these many years, and I believe Mr *Offley* was never there since I was Master of it: and I do protest, that, to my knowledge, *I never saw the Face of this Man till now*: I am sure I never spoke with him, nor sent for him to my House.

If his Story be considered, it will easily appear to be very improbable, for he neither tells, who the Messenger was, that was sent for him, nor the way that he came into the House, and he must needs discern which way he came in, for

I have but one Door into my Houſe, except that by the Stables, which is a great way off the Houſe.

Beſides, *my Lords*, Is it probable, that he ſhould ſee no Body ſtiring about the Houſe, except the *Man without a Hand*, that he ſayes was ſent for him? I aſſure your *Lordſhip*, I have not, nor had my Father ever, that I know of, any *Servant* or *Tenant*, that was maimed in the manner he ſpeaks of; Is it to be imagined that I would take a Man I knew nothing of, into ſo great a confidence, as to employ him about a buſineſs of this nature? I beſeech your *Lordſhips* to look at him; *Is this* Fellow *a likely* Fellow *to be uſed in ſuch an affair? Does he look as if he were fit to be employed for the raiſing* 10000 Men? your *Lordſhips* likewiſe ſee, that he is ſo well thought of, *that he dare not be truſted out of* Newgate; but is kept ſtill a *Priſoner*, and as ſuch, gives evidence here; *He Swears to ſave himſelf, and would fain exchange his Life for mine.*

*My Lords*, The *King's Counſel* lay a great weight upon my going down the 27th of *May*, and my *frequent riding Poſt*; I ſhall ſatisfie your *Lordſhips* of the

Reasons of my *Journies*; the first time I went to take Possession of a *Lease* of six or seven Thousand pounds value, which was renewed to me by the *Bishop*; and I had word that the *Bishop* was ill, and that obliged me to make haste down.

All this being fully proved by *Mr Edmond's* and Mr *Henry*; my *Lord Delamere* proceeded, saying, I had resolved to go see a sick *Child*, but had not taken my journey so soon as the 27th of *May*, nor with such privacy; but that I had notice there was a *Warrant* to apprehend me; and I was willing to keep out of custody, as long as I could; Being at my House in *Cheshire*, my *Wife* sent me an *Express*, that, as to the *Warrant*, *She* hoped it was a mistake; but my *Eldest Son* was very ill, and if I intended to see him alive, I must make haste up; This was the occasion of my quick return.

Mrs *Kelsey* then witnessed, that my *Lord* came to his House in *Cheshire* the 31st of *May* being Sunday, and that his Child was ill; and my *Lord* told her, that

that he heard there was a *Warrant* to take him up; That he ſtayed Monday the 1ſt of *June*, and went away on Tueſday morning.

My *Lady Delamere* (my *Lord's Mother*) teſtified the Child's being ill in the Country; and that while my *Lord* was there, his *Lady* ſent for him *Poſt*, if he intended to ſee his eldeſt *Son* alive.

Mr *Kelſey* proved, That my *Lord D.* came down upon the *Sunday* night, at eleven of the Clock; and ſtay'd at home all *Munday*, and on *Tueſday*, at three in the Morning, he took Horſe for *London*; and that Mr *Kelſey* had Letters from my *Lady Delamere*, and *Mrs Vere Booth*; dated the 4th of *June*; that told him my *Lord* was come to Town the night before.

Sr *Thomas Millington* (the Phyſitian) witneſſed; that upon the 28th of *May*, he was ſent for to my *Lord Delamere's Son*, and found him very ill, and he continued ſo two dayes, and he told my *Lady Delamere*, that he thought the Child would not eſcape. That he knows punctually this was the time, by the

the *Apothecaries Bills*, which he wrote, and finds the date on them.

My *Lord Delamere* then ſaid, My *Lord*, I hope I have given their *Lordſhips* ſatisfaction in all points, and need to give no further Evidence.

I acknowledge I did go at that time privately a By-Road, by the name of *Brown*; as for *Jones*, I appeal to him himſelf, and call *God* to witneſs, I never ſaw the Man before now, in my Life; All that has been ſaid againſt me, (except what this *Fellow Saxon* teſtifies) is but *Hear-ſay, nay indeed but Hear-ſay upon Hear-ſay*, at the third and fourth Hand.

It is at the pleaſure of any two Men in the World, to take away the Lives, Honours & Eſtates of any of your *Lordſhips*, if it be a proof ſufficient to make you guilty of *Treaſon*, for them to ſwear you were intended to be drawn into *Treaſon*.

Upon the whole matter, *my Lords*, I muſt leave my Caſe to the conſideration of your *Lordſhips*; *I am not Maſter of ſo much Law or Rhetorick as the Kings Council, to plead in my own Cauſe*; But I hope what

Evidence

Evidence I have offered, has given your *Lordſhip* full ſatisfaction that *I am not Guilty*, of what I ſtand charged with.

My *Lords*, I would beg you to conſider this, that if I, with thoſe other two *Gentlemen* that he has named, had had any tranſactions of this kind with ſuch a Fellow as *Saxon*; ſo as at firſt ſight, to put ſuch large confidence in him; Can it be imagined I ſo little regarded my own Life, and all that is dear to me; as to have ſurrender'd my ſelf; were it not, that I was certain of my own innocence and integrity? *Life* it ſelf, my *Lords*, is to be preferred above all things, but *Honour* and *Innocence*; and *Job* ſaith, *Skin for Skin, and all that a Man hath will he give for his Life*; and why ſhould I be preſumed to have ſo little a value for it, as voluntarily to deliver up my ſelf to deſtruction; had I been Conſcious that there was any one, who could really teſtifie any thing that could hurt me?

Beſides, my *Lords*; This very *Fellow Saxon*, is but one Evidence; and ſurely, *one Witneſs* will never be ſufficient to convict a Man of *Treaſon*, *tho' thouſands*

of

*of Hear-ſays*, and ſuch trivial circumſtances be tack'd to it; eſpecially, when tack'd to an evidence, which, I dare ſay, your *Lordſhips* are far from thinking it deſerves credit.

Would not any of your *Lordſhips* think himſelf in a very bad Condition as to his Fortune, if he could produce no better Evidence to prove his Title to his Eſtate, than what has been now produced againſt me, to take away my Life, and if ſuch *Evidence* as this, would not be ſufficient to ſupport a Title to an Eſtate, certainly it can never be thought ſufficient to deprive a Man of *Life*, *Honour*, *Eſtate and All*.

*My Lords*, *God* knows how ſoon the Misfortune of a *falſe Accuſation* may fall to the Lot of any of your *Lordſhips*; ſince that may happen; I queſtion not but your *Lordſhips* will be very cautious, how, by an eaſie Credulity, you give encouragement to ſuch a Wickedneſs; For *Knights of the Poſt will not end in my Tryal, if they proſper in their Villany; and perhaps it may come home to ſome of your* Lordſhips, *if ſuch Practices be encouraged.*

My *Lords*, the Eyes of all the Nation are upon your Proceedings this day; Nay

I may ſay, your *Lordſhips* are now judging the Cauſe of every Man in *England*, that ſhall hereafter happen to come under the like Circumſtances with my ſelf; For *accordingly as you Judge of me now, juſt ſo will Inferiour Courts be directed to give their Judgment in time to come.*

Your *Lordſhips* very well know, Blood once ſpilt can never be gather'd up again; and therefore, you, I am ſure, will not hazard the ſheding of my Blood upon a doubtful Evidence;——If it ſhould be *indifferent*, or but *doubtful* to your *Lordſhips* (*which upon my Proofs, I cannot believe it can be*) whether I am *Innocent* or *Guilty*; Both *God* and the *Law* require you to acquit me.

My *Lords*, I leave my ſelf, My Cauſe, and all the Conſequences of it, with your *Lordſhips*; And I pray the *All-wiſe*, the *Almighty God*, to direct you in your determination.

Mr *Solicitor General* then ſaid, May it pleaſe your *Grace*, and you my *Noble Lords*,

The Evidence againſt this *Noble Lord* is of two Natures, part of it is poſitive Proof, and part is Circumſtantial, and

tho'

tho' it be allowed, that *there must be two Witnesses in cases of Treason*; and that Circumstances, tho' never so strong to fortifie one positive proof, cannot make a second positive Witness; yet, I crave leave to say, that *there may be Circumstances, so strong & cogent, so violent and necessary, to fortifie a positive Testimony; That will in Law amount to make a second Witness; such as the Law requires.*

My *Lords*, If a man comes and swears against another, That he said, he will go and kill the *King*, and another Man, that did not heare these words, testifies his lying in wait; That Circumstance of lying in wait, that was an Action indifferent in it self, when applied to the positive Proof, will be a second Witness to satisfie the Law.

It is not my *duty* to carry the *Evidence* in this Case, *further than is will go*; and *I am sure it is not my Duty, to let it lose any of its Weight.*

My *Lord*; Our positive proofs, is but one single Witness, and that is *Saxon*, (Mr *Solicitor then repeated his Evidence, and went on saying*) This, I must acknowledge standing single, will make but one Witness; but *whether the Circumstances*

*that*

*that have been offered by the other Witnesses, be such violent Circumstances, as necessarily tend to fortifie and support that positive Evidence, and so will supply the defect of a second Witness; is the next Question I come to consider:*

Mr *Solicitor* then repeated the Evidence of the Lord *Grey*, and Mr *Jones*; (*how truly let any who will be at the trouble of reading the Tryal at large, judge*) and proceeded saying, Here, my *Lord*, is the main Circumstance that renders the matter suspitious; That very night that *Jones* came to Town (the 27*th* of *May*) at ten at Night, does my Lord *Delamere*, go out of Town, under the disguise of the Name of *Brown*, and a By-Road, into *Cheshire*; this I say, is the Circumstance that renders the thing suspitious.

But, tho' it was not observed in the whole Proceeding of the Tryal, *Vaux* witnessed, that my Lord dealt to him, and engaged him the 26*th* of *May*, to go out of Town with him the next day.

But now, my *Lords*, comes the *Question*, the *main Question*, how it is made out, that my Lord *Delamere* had notice, *Jones* brought the Message from the *Duke* of *Monmouth*.

*Jones* indeed does not say that he imparted it to him, But *Story* says that

*Brand*,

*Brand*, who knew of the Message, *did acquaint him, that my* Lord *had received it in the Coffee-House, and that Night went out of Town.*

It is true, this is but a hear-say, but that which followed, being matter of Fact; My *Lord's* going out of Town that Night, and in such an unusual suspitious manner, gives more credit to the Relation, than, as a bare hear-say, could have of it self.

For unless there be a good account given of my *Lord's* thus going out of Town; it is a kind of necessary presumption, that he acquainted him with the Message; and if so, it can have no other Construction, than to be in pursuance of the directions brought him from the *Duke* of *Monmouth*.

Another thing, my *Lords*, that renders this matter suspitious, is, the Name which my *Lord* assumed; *a Name by which the Party used to call my Lord*; which is proved by *Babington* and *Paunchforth*.

*Paunchforth* tells you, that one *Lock* came for some of the *Duke* of *Monmouth's Declarations*, for Mr *Brown*, to be sent into *Cheshire*; So that tho' some body else was called by the Name of *Browne*

yet

yet you have had no account given you that there was any other *Brown* in *Cheshire*.

It is very suspitious, that if my *Lord* went into *Cheshire* under the name of *Brown*, and some came on *Brown's* behalf, for *Declarations* to be sent into *Cheshire*; and my *Lord* commonly, with that Party, went by that Name; *That will be a great Evidence of his Correspondence with* Monmouth.

I confess, my *Lords*, all this while, our proof is circumstantial; and indeed there is no positive proof, but that of *Saxon's*; and here I must confess there are Objections made, which I cannot readily answer—— There is no good account given, what reason there was for so many *Post-Journeys*, backward and forward; —— These are matters of suspition; But I confess matters of suspicion only, unless clear, positive, probable proof be joyned with them, will not weigh with your *Lordships* to convict a Man of *High Treason*; but whether these matters of suspition, be such violent and necessary presumptions, as tend to fortifie the positive Testimony, I must leave that to the consideration of your *Lordships*.

The *High Steward* then concluded, saying, my *Lords*, There is something I cannot omit taking notice of, that one mistake in point of Law might not go unrectified; *viz. That there is a necessity in point of Law, that there should be two positive Witnesses to convict a Man of Treason.*

Without all doubt, what was urged by that learned *Gentleman* who concluded for the *King*, is true; There may be such other substantial Circumstances, joyned to one positive Testimony, that by the Opinion of all the Judges, has been several times adjudged to be a sufficient Proof.

As in this Case; If your *Lordships* should believe *Saxon* swears true; and shall believe there was that Circumstance of *Jane's* coming over from *Holland*, with such a *Message* the 27th of *May* (*which is directly sworn in Evidence*) and what the other Witnesses have sworn likewise, that my Lord *Delamere* went out of Town *that Night, changed his Name, and went an indirect By-Road; certainly these Circumstances*; if your *Lordships* be satisfied he went for that purpose; *do necessarily knit the positive Testimony of* Saxon; *and amount to a second Witness.*

Your

*Your Lordships are Judges*, And if you do not believe the Testimony of *Saxon*, which has been so positively contradicted by divers Witnesses of Quality; The *Prisoner ought to be acquitted of this Indictment.*

'Twas well for my Lord D. & a multitude more, that they were so; for had his Lordship fallen, we should not have known where they would have stop'd; and the High Steward could have made this Evidence to have passed to the cutting off hundreds of Men in the West.

The *Peers* having thereupon withdrawn, for about half an hour; returned and took their Seats, and *unanimously declared, upon their Honours, that the Lord Delamere was not Guilty*; and so his *Lordship* was most happily delivered; and with him the Right Honourable my Lord of *Stanford*, my Lord *Brandon*, Sr Robert *Cotton*, Mr *Offley*, and many other valuable Persons and good Patriots, who were lockt up in the Tower, and other Prisons, in order to their Tryals; and Tryal and death in that day, were rarely found to be far asunder.

Thus *Saxon*, one of the vilest Miscreants of human Race, had a fair blow at one of the most valuable and deserving Persons of this Generation; the *Right honourable Henry Lord Delamere*, Grand-Son of the most worthy and never to be

forgotten Patriot Sr *G. Booth*; and Son & Heir, as well of the Vertues, as of the Estate, of the incomparably good and great Man, Sr *George Booth* (Lord *Delamere*) But when the Villain came to be detected of Perjury; And his Suborners found that the sham would not pass; they were ready to wish themselves half hanged, that ever they pretended to believe him at all.

The repeated Imprisonment, Vexation and eminent danger of this excellent Person, my *Lord Delamere*; and many other honourable & highly deserving Patriots of the *Vale Royal of England*; having been promoted and abetted by a *Fanatical* Presentment or Address of a *Grand Jury* of *Cheshire*; which bears the Stile of *Sr Roger L' Estrange*; I shall here subjoyn it, (*viz.*)

WE *the* Grand Jury, *sworn to enquire for the Body of the County of* Chester, *at the Assizes held in the Common-Hall of Pleas in the Castle of* Chester, *upon* Munday *the* 17*th day of* September, *in the* 35*th year of his now Majesty's Reign, and in the Year of our Lord* 1683, *having heard his Majesty's* Declaration *to all his Loving Subjects*, touching the treasonous Conspiracy against his sacred Person and Govern-

ment

ment, *lately discovered, openly read to us in Sessions, by order of the Court, as well as in our respective* Parish Churches by Royal Command, *and seriously considering the extensiveness of the said Conspiracy and dreadful Consequences thereof, had it taken effect; since notions of Sedition and Rebellion have been cultivated to such an amazing height, that some have not only dared to draw them into practice in their Lives, but to propogate them with their latest Breath, by Devilish Insinuations of their consistency with Religion and Law;* We *conceive it high time to manifest our Separation from such Persons and Principles; their Favourers and Abettors, with detestation of that* dreadful Climax, the Bill of Exclusion, Treasonous Association, Ignoramus Juries, and seducing Perambulations; *by which the* Accomplices *advanced towards their intended* Assassination & Massacre; *which barbarous design, it cannot be imagined that* Forty, *or the* Council of any Six, *durst undertake, without confident reliance on Confederate Auxiliaries, and not knowing the Latitude of such dire Combinations, but heedful of our present charge and duty, with the indispensable Obligation the Oaths of Allegiance and Supremacy, lay upon all;* We *hold our selves bounden this distempered*

juncture of Affairs, to present, that We have strong apprehensions of danger from a dissatisfied party in this Country, who not only shewed their defection openly, by an Address made to Henry Booth, Esq; and Sr Robert Cotton, Knight and Baronet, at the last Election of Knights of the Shire, tending to alter the Succession of the Crown; with other dangerous and seditious purports, giving assurance of standing by them, in that design, without respecting their Oath of Allegiance to the King and his Heirs; but also by their several Meetings and Cabals since, which administer greater suspition, from the store of Arms many of them were provided with; And for that the same Persons unanimously assembled with Schismaticks and disaffected Persons in the publick reception of James Duke of Monmouth, who has appeared a prime Confederate in the late treasonable Conspiracy the concourse of armed Persons then attending him, especially in and near several populous Towns in this County, where, the invited and instigated Rabble, in a broad mixture of various Sectaries; with superfluous joy and popular noise, tumulted on that occasion, has had an evil influence upon this yet unsettled Country, and brought a terror upon his Majesties good and peaceable Subjects; for remedy whereof, with relation to the publick Peace, and to prevent as far as in us lies, the spreading of such contagion, as also to wash our Hands from all misprision, by concealing proceedings that may encourage greater Evils in other parts of his Majesties Dominions; We conceive it expedient that the Principal Persons who promoted the aforesaid Seditious Address, and also those who were notorious

*notorious in consorting, aiding and abetting, in the* Routous reception *and entertainment of the said* Duke *of* Monmouth *and his Associates in this County; together with the* frequenters of Conventicles, *and those that harbour and countenance any* Non-conformist Minister *or* Preacher should be obliged to give security of the Peace, *And particularly;*

Charles, *Earl of* Macclesfield,
Richard, *Lord* Colchester,
Charles, *Lord* Brandon,
Henry Booth *Esq;*
Sr Robert Cotton, *Knight and Baronet,*
Sr Willougby Aston, *Baronet,*
Sr Thomas Mainwaring, *Baronet,*
Sr Thomas Bellat, *Baronet,*
Sr John Crew, *Knight,*
Nathaniel Booth, *Esq;*
Colonel Thomas Leigh *junior.*
John Mainwaring *of* Baddeley, *Esq;*
Peter Leigh *of* Boothes, *Esq;*
Colonel Roger Whitley *of* Peele, *And*
Mr Thomas Whittley *his Son.*
Roger Mainwaring *of* Kiruuntham, *Esq;*
Tillston Bruen *of* Stapleford, *Esq;*
Sr Robert Duckenfield, *Baronet,*
Thomas Lea *of* Dernal, *Esq;*
Mr Robert Hide *of* Cattenhall,
Edward Glegge *of* Grange, *Esq;*

Richard Leigh *of* Highleigh, *Esq*;
Mr Roger Whittley,
Mr Robert Venables *of* Winthcombe,
William Minshall *of* Namptwith, *Esq*;
John Hurlston *of* Newton, *Esq*; *And*
Charles *his Son*, *And*
William Whitmore *of* Thutstalton, *Esq*;

We *present also*, *that* all persons not frequenting the Church according to Law are Recusants; *it being impossible to know the hearts of men, for what cause they refuse to come to Church*; *And that* all connivance *and indulgence* in that case, is the ready Road to Rebellion, Popery and Arbitrary Power; *And further* We *desire humbly to present to his most* sacred Majesty *our repeated Congratulations of Joy, for his and his* Royal Brother's *happy deliverance from the late Treasonable Conspiracy*; *with our assurances that* We will, with our Lives and Fortunes, stand in defence of his sacred Person and Government, his Heirs and Lawful Successors; *To all which we subscribe our Names*;

*The Grand Jury*,

| | | |
|---|---|---|
| T. Grosvenor, | Jo. Dod, | Edw. Bromley, |
| W. Cotten, | John Daniel, | J. Hockenhull, |
| Edw. Legh, | T. Minshall, | Francis Leche, |
| Peter Shakerley, | J. Starkey, | Tho. Barnston |
| Tho. Warburton, | Hen. Meales, | John Davis, |
| Anthony Eyre, | Rob. Alpart, | |
| Hen. Davies, | Ran. Dod, | Heads. |

Heads of some *Informations* and *Examinations*, taken upon Oath before a *Committee* of the *House of Lords*, appointed to inspect, *Who were the Advisers and Prosecutors of the Murders of the Lord Russell, Colonel Sidney, Sr Thomas Armstrong, Mr Cornish* & others; And who were *Advisers of issuing* Quo Warranto's *against Corporations*; & *who were Assertors of the dispensing Power*; whereof a *Report* was made, by the Right honourable the *Earl of Stamford*, upon the 20*th* day of *December*, 1689.

Also Copies of some other material Papers, relating to the *Murders* and *Oppressions perpetrated* upon pretence of a *Conspiracy* against *King Charles* the second, and the *Duke of York*, in the year 1683.

MR *John Phelps*, Mr *Thomas Morris*, Mr *Peter Hagar*, Mr *Robert*

*Bates*, Mr *Richard Hoby*, Mr *Horneby* and Mr *Crispe Grang* (all Persons of good value and unspotted Reputation) being examined upon Oath in relation to *Josias Keeling*, deposed in substance as follows, (*viz.*)

That *Keeling* three or four days, or a week, before his *Discovery*, of the *Presbyterian Plot*, came into their Company at the *Fleece Tavern* in *Cornhill*; where, he appearing to be much disturbed and confused; one of their Company enquired of him, why he seemed to be so disordered; to which he answered, that *he lay under a great Temptation*, for he was sent to, by the *Lords* in the *Tower*; and some *Gentlemen* that came to him from them, told him, *his own Party had disobliged him*, and he had now an opportunity to be *revenged* of them; That *he could not be insensible of some Persons that designed against the Government*; and that if he *would discover*, he might make himself and his Family; That he had great

The Popish Lords were then in the *Tower*.

He had, as a loose Fellow, been cast out by the Congregation, to which he belonged.

Subornation was, at that day, carried on, by the tender term of discovering.

*proffers*

proffers of Money, and a Place of 1000 l. per annum; and might go in a Coach and six Horses to Windsor. And that he was to meet those who treated with him, again that Night, at the Bull-head Tavern near the Tower.

That upon Keeling's talking at this rate, one of the Company askt him, why he troubled them with this discourse, and told him, *if he knew any thing against the Government*, he ought to discover it; but if he knew nothing, he would do well to keep out of such Temptations, and not go to the meeting appointed; but he said he would go, because he had promised them in the morning, that he would meet them again, but declared that he knew nothing, & said that he acquainted them with it, because *if he should be prevailed upon by Temptation of Money*, to witness any thing, they should be able to witness against him, that he had declared that he knew nothing in agitation against the *Government*, and that they should testifie, that *he was the greatest Rogue and Villain living, if he should swear against any Man.*

Mr *Phelps* (in particular) deposed, That he attended to have testified this at my Lord *Russell's* Tryal, but was not

askt to come in at any of the other Tryals, and durst not appear, unless desired; That he remembers not, whether or not, he knew of *Walcot's* Tryal, before it was over; but that he knew not that *Keeling* was a Witness against him, till after the Tryal was over.

Mr *Morris* deposed, That he knew not that *Keeling* was a *Discoverer of a Plot*, till after *Walcot's* Tryal; but believes *he acquainted Sr William Poultney what he heard* Keeling *say*, before the Lord *Russell's* Tryal; and also told it to Mr *Stevens*; whereupon he was subpœnaed to that *Tryal*, and went, but the Tryal was not till three or four days after the time he was directed to attend; That a second *Subpœna* came the night before the Tryal, but he being from home, did not receive it till after the *Tryal*.

Mr *Hague* deposed, That he thinks he knew *Keeling* was a Witness against Captain *Walcot*, but did not then offer himself to be a Witness, because times were so difficult; but when he heard of my Lord *Russell's* Tryal, he acquainted his Lordship's Servant with what he has

now ſworn, and that he attended at the Tryal, but *Keeling* was no Witneſs.

Mr *Bates* depoſed, That he believes he told what he hath now ſworn about *Keeling*'s Declaration at the *Fleece Tavern*, to twenty perſons, before the Lord *Ruſſel*'s Tryal; and that he heard *Keeling* ſay, in the *Amſterdam Coffee-Houſe*, *It is reported, that I have diſcovered a Plot, of the* Duke *of* Monmouth, *my* Lord Ruſſell, *and others; but I know nothing of it, and am innocent and falſly accuſed.*

Mr *Haly* depoſed, that he remembers not that he ſpoke of what he has now ſworn to any Perſon, for *times were ſuch he was afraid to ſpeak of it.*

*John Keeling* depoſed, that *Joſia Keeling* his Brother (*who gave his firſt Information upon Oath to* Sr Leoline Jenkins, *upon the* 12*th of* June 1683.) came to him the next day, and called him out, and carried him into the *Company* of *Good-enough*, at the *Dolphin Tavern*, where they talkt of taking off the *Black-Bird and the Goldſmith* (meaning the *King* and the *Duke*) That the Company being parted, he the ſaid *John Keeling*, told his

his Brother, that he did not understand that *Gibberish*, and therefore would not be concerned.

That his *Brother* then carried him to one *Mr Peckham*, at the *Fleece-Tavern* in *Southwark*; where *Peckham encouraged him, and told him, if he would be a Witness, he should be well rewarded*; Then he carried him to two *Gentlemen* (*whom he knew not*) to the *Flanders Coffee-House*, who encouraged him, and would have had him to a Dinner, but he declined it.

That then his *Brother* told him, he must go with him to *Secretary Jenkins, to give Information of what he had heard*; to which he shewing aversion, his *Brother* told him, *he must go thither or to* Newgate; and so he was compelled to comply.

That he gave notice to Mr *Tory* (his *Brother's Master*) how his *Brother* had trapan'd him, and made him to swear; and that he acquainted *Mr Jones* therewith, *and desired him to give notice to the Persons accused.*

An honest *Whigg Tory* Citizen, living in St *Martins Le-grand*, and is reckon'd the only *Tory* in *London*, who at all Elections votes for the true English Interest.

That

That he did not believe the *Plot*, till he saw the *Proclamation*, and understood that *Lee* the *Dyer* came in for a *Witness*; *That his Brother had* 500 l. *of the* King; *and brought it to a Coffee-House.*

That he the said *John Keeling was subpenaed to be a Witness against the* Lord Russell, *and was sworn to give Evidence to the* Grand-Jury; but was not examined.

Mr *Nathaniel Wade* deposed, that *Josia Keeling accused him of being in the* Rye-Plot; tho' he had never been above twice in his company: That, at the *Salutation Tavern* in *Lumbard-street*, he heard *Keeling* * *speak very extravagantly, and say he would do some brisk thing*; and that thereupon *Mr Nelthorpe* said, *I prethee be not mad*. And that presently after Mr *Wade* heard his own Name in a *Proclamation*.

* He was ordered by *Jenkins* to draw Men in; and that he might accomplish it, They gave him Licence to talk Treason.

Mr *John Tisard* deposed, that at my *Lord Russell's Tryal*, four *Gentlemen* told him, that *Keeling* (*who was to have been the first Evidence against his Lordship*) had con-

confeſſed that he was to meet ſome *Gentlemen* at a *Tavern*, *who were to give him Inſtructions what to ſwear*; but he ſaid, when he had received the Inſtructions, he would make a diſcovery.

That however, *Keeling* was not produced againſt my Lord, and he believes the reaſon was, *becauſe ſome were appriſed of the defence, which his* Lordſhip *would have made againſt his evidence.*

Mr *Nathaniel Gael* depoſed, that by the perſwaſion, of *Keeling's Mother*, he procured 100 *l.* to be lent to him, by Mr *Wolfe* a *Merchant*, to ſupply his neceſſities, *which* Keeling *repaid three Months after, which was after he was an Evidence.*

*Joſia Keeling* being examined, declared, That *he remembers not* that he was in an Agony or trouble at the *Fleece-Tavern*, or that he told the Company there, he was to meet any Perſons concerning the diſcovery of a Plot, or that he was promiſed a Groat or Employment, or that he deſired them to bear Witneſs againſt him, if he pretended to ſay any thing of a Plot, or that he knew nothing.

That *he was ſubpenaed at the Lord* Ruſſell's

Ruſſell's, *and* Walcot's *Tryal*; and was there during the whole Tryal of the *Lord Ruſſell*.

That he applyed himſelf to the *Lord Privy Seal*, at his Houſe, to help him to his place in the *Victualling Office*; and he thinks he applied alſo to the *D. York*; That he after reminded the Lord *Halifax* going up into the Gallery at *Whitehall*; and after that, he heard he had his place, he thankt him that Evening, and *he continued in his place till within theſe ſix Weeks.*

That *he had Money* of the *King* as *Subſiſtance*; and alſo *received* 500 l. *of Mr* Duncumb *the Banker*; That the *King* told him he ſhould have 100 *l.* a Year, but he never had it.

Mr *Aaron Smyth* depoſed, That he was a *Priſoner* in the *Tower*, when *my Lord Ruſſell* and *Colonel Sidney* were tryed; *and was kept cloſe Priſoner above nineteen Weeks, at* 5 l. *a week charge, and two Warders watched him, or lay in the Room.*

That one of his *Warders* told him, that *Mr Ambroſe Philips* was come to ſpeak with him, and *had an Order from one of the Secretaries to come as often as he would,*

*and*

*and bring whom he would along with him*; but then he was alone; When *Mr Philips* came in, after ſome other diſcourſe, *he told him it was in his Power to make himſelf what he would*; for ſaid he, *you know this Rogue* Sidney *is a Traytor, and you may make your ſelf what you will*, if you will DISCOVER what you know of his deſigns againſt the Government.

That he replied, *he could not ſay any thing that could touch a Hair of* Colonel Sidney's *head*; and that then *Mr Philips* ſaid, *If he might adviſe the King, he would have all the damn'd* Whig *Rogues hanged*; and for your part, any Body knows you are Guilty.

Sr *Ambroſe Philips* being examined, confeſſed that *Aaron Smyth* had been his Client, and there was a Friendſhip between them, and he thought he might have prevailed with him to have declared what he knew, which *he thought would be a ſervice to the Publick*, and ſervice to himſelf.

That he cannot be poſitive, whether *Mr Roger North* gave him an Order to go to *Aaron Smyth*, or told him he ſhould find an Order with the *Lieutenant* of the *Tower*.

That

That he used to *Mr Smyth*, the Arguments a Friend might do; and *told him he came not to trapan him*; nor would he discover more of what he would tell him, but what he would give him leave; but *he found him very resolute*; and so fairly took his leave, and never came near him more.

That he believes he might say to *Mr North*, that he had such a power in *Mr Smyth*, to perswade him to tell what he knew; *That no body besides Mr North*, either perswaded, or advised him to go to *Mr Smyth*.

*Mr Roger North* being examined said, that he procured no Order for *Sr Ambrose Philips* to go to *Aaron Symth*; nor doth he believe he ever had any conversation with him about that matter; and he is confident he never delivered him any Order for going to him; nor told him that he should find any such Order at the *Tower*; nor to the best of his remembrance, knew he of any such Order; and that *Sr Ambrose Philips mis-remembers*, if he says he had any such Order from him.

*Sr John Moore* being examined, said, That

That 'twas *not he that rejected the Sheriffs, but the Court of Aldermen*; That *Mr Papillon* was ſet aſide by the *Court*, becauſe Sr *John* had drunk to *Sr Dudly North*.

That he doth *not believe or remember*, that he had any *Orders* from *Court* to drink to *Sr Dudly*; That *Secretary Jenkins* was often to viſit him, but *never gave him any* * *Directions*.

* Perſwaſion would do, with an eaſie, willing Man.

That he believes Mr *Papillon* and Mr *Dubois* demanded the *Poll*, That he had no direction from *Whitehall* to reject the *Poll*, but the *Court of Aldermen did reject it*.

That *the Souldiers were ſent to keep the Peace*; that *he remembers not*, that he, either the day before, or that morning of the *Poll*, made any *promiſe not to diſturb the Poll*; nor doth he remember what time of the day he went to diſturb the *Poll*; Many of the *Citizens* came to his Houſe, and would have him to the *Hall*, telling him, *the Poll went on, tho' he adjourned it*; *which Adjournment*, he ſaith, *was by advice of the Court of* Aldermen.

Mr

Mr *Normanſel* and Mr *Trotman* the Secondaries, depoſed, that *Graham* and *Burton* were the *Proſecutors of my Lord Ruſſell*; that *Sr Dudly North* had the Books from them, and returned my Lord Ruſſell's Jury; that *Juries had* uſually been returned by the *Secondaries, and taken out of two, three, or four Wards*; but *this Jury was taken out of above nineteen Wards*: That *Sr* Benjamine Thorowgood *returned the Jury upon Alderman Corniſh*.

Mr *Trotman* added, that *Graham* and *Burton* were alſo the *Proſecutors* of *Alderman Corniſh*.

Mr *Perry* (who had been *Clerk* to Mr *Trotman* nine Years) depoſed, That he was not by, at the return of my *Lord Ruſſell's Jury*; but he made a Copy of it, and *it was under Sr* Dudly North's *hand*.

That he was with *Mr Trotman* at *Sr Benjamine Thorowgood's* Houſe, *who had the Books of both the Compters*, and he wrote the Names, as *Sr Benjamine* directed him.

*That in common caſes, the Pannels uſed to be returned out of two or three* Wards.

The proper Officers, swear out of two or three, but the Common Serjeant swears out of *sixth* so *makes* some advance towards *Sr Dudley North*'s number.

*Mr Crisp* the *Common Serjeant* deposed, that *he hath known Juries returned out of six Wards, and never out of fewer than four.*

That he was in Court at part of the *Lord Russell*'s Tryal; That he remembers his *Lordship desired he might be heard by Counsel*, and that they might have time to consider of it; but the Court heard them immediately; [*The Gentleman paid too great a deference to the Court, to say they refused my* Lord Russell *time, and therefore expresses it in the tender Words,* That the Court heard them immediately.]

*Sr Dudly North* being examined, said, That he was a *Freeman of London*; *and the* Lord Mayor *drank to him as* Sheriff; and he took upon him the Office, and was 2000*l.* out of Purse, which he never had again directly or indirectly.

[*But he was well rewarded, by being first one of the Commissioners of the Customs, and then of the Treasury; whereby he was sufficiently reimbursed; and rewarded also, for the*

*the good ſervice he did in his* Sheriffalty.

*Sr Dudly* went on, ſaying, *That he impannelled the* Juries *for the Seſſions, when the* Lord Ruſſell *was tryed; That he returned the beſt* * *Jury he could*, without obſerving any Ward; and drew this out of ſeveral Wards, becauſe they might be the more ſubſtantial Men.

* It being Sr *Dudley's* own Jury, and they doing their buſineſs to content, he treated them at a Tavern after the Verdict given, as appears by the Journal of the Houſe of Lords.

That, *to the beſt of his remembrance*, Sr Peter Rich *concurred in this Jury*; if he had oppoſed it, he ſhould not have done it.

That the *Juries* before, were returned by the *Secondaries*, but *this being a very* * *extraordinary buſineſs, he thought it requiſite to take care of it himſelf.*

* It was indeed a very extraordinary buſineſs, to murder as valuable a Noble Man, as ever drew Breath in *England*.

That he took no care of what opinion the Jury were of, but only that they were ſubſtantial Men [*yet he cannot ſhew one Man called a* Whigg, *returned on the Jury.*]

That he had no order or directions from any Man * *alive, to take care of this busines.*

* Note, his Brother the Lord Keeper was now dead, at the time of this Examination.

Sr *Peter Rich* declared, That he was never asked in his whole year to impannel a *Jury*; and that he never impanneled any, or signed any Pannel to his knowledge; and sayes positively, that the Books were sent to him by the *Secondaries*, and that he never saw the Pannel (of my Lord *Russell's Jury*) till he heard it read in *Court*.

*That the usual practise of the return of* Juryes, *in* London, *is by the* Secondaries.

Sr *Benjamin Thorowgood*, being examined, said, that he was *Sheriff* at the time when Mr *Cornish* suffered; That the two *Secondaries* brought him the Books. That *he knows not out of how many Wards the Jury was returned, but he thinks out of most of them, and he believes it to be the Custom to return the* Jury *so.* [*But the Secondaries swear the contrary.*]

That

That he thought it a *piece of justice in him, to see the* Jury *fairely returned*; being the *Gentleman* to be tryed, had been one of his *Predecessors*.

That the *Jury* were of the *sufficienteſt, ableſt and honeſteſt Men*, of the *City of London*; and he believes all the Men that ſerved of the *Jury*, were thoſe he returned.

This is *Sr Benjamine's* opinion that the ſubſtance as well as the honeſty of the City was got into Tory Hands (the jury being all of that ſtamp) but to let their honeſty alone, the contrary is as evident, as to the ability of more than one of theſe *Jury-Men, as 'tis that Juryes* were wont to be taken out of moſt of the Wards.

Mr *Henry Corniſh*, being examined, depoſed, that his Father was kept cloſe from his Commitment to the day of his Tryal, and *Captain Richardſon* would admit none of his Friends to come to him.

That he went to *Normanſel* the *Secondary*, for a Copy of the Pannel, and either he or his Clerk told him, that *Burton* and *Graham* hadit; and when he came again in the Evening to them for it, *one of them told him, They had orders from above, not to let him have it*,

Sr *James Forbes*, deposed, that the *Duke* of *Monmouth* desired him to shew Mr *Hambden* a Paper *written with the King's own Hand*; which was, for the *Duke's* owning of the Evidence of *Romsey* and others.

That, he told the *Duke* that *that Paper would make him infamous, and would be a means of destroying many Men's Lives*; whereupon, the *Duke* sent him with the Paper to the *Earl* of *Anglesey*; who, upon the reading of it, presently wrote a a Paper of Reasons against it.

That before Sr *James* went to the *Earl* of *A.* the *Duke* told him, if it were so as he had told him, *he would have the Paper again, tho' he dyed for it*; whereupon Sr *James* ask't him how he would get it. That the *Duke* said the *King* would shew it him, and then he would tear it out of his Hand; and then further said, the *Duke* of *York was his implacable Enemy*.

That, as soon as Mr *Hambden* had read the Paper, he said, *he was a Dead Man*; and ask't leave of Sr *James* to shew it to his *Father*, which he consented to.

That

That he returned to the *Duke*, and gave him the *Earl* of *Anglesey*'s *Reasons* against the Paper, together with his own thoughts of it; whereupon the *Duke* replyed, that *he saw they had a mind to ruine him; and he was only brought into* Court *to do a* Jobb; and that he would not Sleep before he had retrived the Paper.

That, the *Duke* told him how kindly the *King* had expressed himself to him; and Sr *James* desired the *Duke* to save *Colonel Sidney*, if possible; but he feared he could not; but said, *he had told the King, how good a Man the* Lord Russell *was, and how unjustly he had been put to death.*

That, at the desire of Mr *Hambden*, the *Duke* went to visit him, before he had his Pardon: tho' he thought it to be very dangerous; and was with him two or three Hours in private as and Sr *James believes* it was about saving the *Colonel's Life.*

That, the *Duke's Servants* told Sr *James*, at the *Cock-Pit*, that they were ordered not to suffer any of his old *Friends*, or *Whiggs* (*and such and such in particular*) to see, or pay a *Visit*, to the Duke.

That the *Duke* told Sr *James*, that the *Lord Halifax perswaded him to sign the Paper*; but whether it were for his good or not he knew not.

That when Sr *James* told the *Duke* how it was reported in the Town, that he was come in to be a Witness, he answered, he never would.

That the next day after Sr *James* had given the *Duke* the *Earl of Anglesey's Reasons*, and Mr *Hambden's and his own Opinion*: *Colonel Godfrey* came to him, and told him that the *Duke* had recovered the Paper, and got it into his own possession; and Sr *James* went to tell Mr *Hambden*, Mr *Charlton*, *and Major Wildman of it.*

*Colonel Godfrey*, deposed That the first night the *Duke of Monmouth* came to Court, he went to him with Sr *James Forbes*, and the *Duke told them how kind the King was to him*, in giving him his Pardon: and that he believed he owed a great deal of it, to the *Lord Halifax*; and several times he heard him say, that the *Lord Halifax* had been kind and servitable to him.

That the *Duke* said, the *King* told him

him, that *he must submit to be ask't Questions in publick, concerning the Plot; and must submit to him, and not contradict him.*

That within two or three dayes after the *Duke* surrendered himself, he shewed him a Paper, which was, *a Declaration or seeming Confirmation of the Plot, with which the* Lord Russell *and* Colonel Sidney *were charged*; and he thinkes the Paper was signed, with the *Dukes* name to it.

That the *Paper* which the *Duke* got from the *King* was not the same with the other; and he believes he did not see that Paper; That the *Duke* told him, after the Paper had been sent to the *Council*, that he had signed such a Paper; he understood in general from him, *that this Paper was a Confirmation of the Plot, the Lord* Russell *and Colonel* Sidney *suffered upon.*

That he thinks the *Duke* told him, the *Lord Hallifax perswaded him to sign that Paper*; The *Reasons* he used were, that *he might keep at Court, and be near the King or else he must go from thence.*

*Anthony*

*Anthony Rowe Esq*; deposed, That the *Duke* of *Monmouth* sent him to the *King*, with two or three *Letters*; whom he found very angry with him, for the Company he kept; and particularly the *Lord Howard*, *who, he said was so ill a Man, that he would not hang the worst dog he had, on his Evidence.*

Observe here what value that King put upon the Blood of *Lord Russell* and *Col. Sidney*, &c.

That he heard the *Duke* had a Paper given him from the *King* to consider of; he seemed unwilling to sign it, but at last consented, so he might not be askt to sign any other; He being in the Bed-Chamber, when the *King* told him he should not; whether he signed it or not, Mr *Row* knows not.

That this Paper was given to the King, and shewed to the *Council*, but they not likeing it, it was either Burnt or Torn, and another Paper drawn.

That about that time, some thing of this being put into the *Gazette*, Mr *Row* acquainted the *Duke* with it: Who was displeased at it; *and bid them tell every Body they met, that it was false.*

That

That *Mr Row* doing ſo in the Coffe-houſe that night, the *King*, was acquainted with it; and ſent for him early the next morning, and chid him; and told him, he did the *Duke* more hurt than he was aware of, and commanded him to ſpeak no more of it.

That the *Duke* told him *he was reſolved not to ſign the ſecond Paper*; That one day afterwards, he, and *Godfrey* and *Barker*, were in the outward Room, and the *Lord Hallifax*, *was with the Duke and Dutcheſs in her Room*; and the *Duke* came out to them once or twice, and *at laſt ſaid he had done it*; and that night he ſeemed angry with himſelf that he had ſigned the Paper, for that it might hurt others, and that if it had concerned none but himſelf he had not cared; but ſaid, he would not reſt till he had the Paper again, and the next morning he told him he had got it.

That the *Duke* told them, that the *King* had often preſs'd him to ſign it, and told him he ſhould never ſee his face more if he did not do it, but if he would he ſhould ask him nothing, but he would grant it; But *when he did ſign it*,

he

he knows not; nor that there was any in the Room, but the *Dutchess* and the *Lord Hallifax*.

That the *Duke told him*, after he came out, *that the Lord Hallifax had over perswaded him, and made him do it*; and engaged to him, the *King* should never let the Paper be seen; *and said, this was the time to gain the King's favour*: It being long ago, Mr *Row* declared these things as he believes, and to the best of his Remembrance.

Mr *Robert Yard*, being examined, declared, that the *Advertisement* concerning the *Duke* of *M.* which was put into the *Gazete*, was what was handled in *Council*, the day after the Duke came in, It was the giving an Account of what passed betwixt the King and the Duke. That he had the Paper either from the *Lord Sunderland* or *Sr Leoline Jenkins*.

*John Hambden Esq*; declared himself thus; His Case is so twisted with those of the *Noble Persons*, whose *Murders* you enquire after, that he knows not how to speak of theirs, without relating his his own, and that he looks upon himself

almost

almoſt as much murdered, as any of them, by reaſon of his Sufferings.

*My Lord Ruſſell* and Col. *Sidney* were clap'd up in the *Tower*; after which he was ſent for, and brought into the *Cabinet Council*, or *ſelect number of Lords*; and askt, *whether he was of the Council of ſix*; ſo the *Lord Howard* was pleaſed to call it: He ſaw there, the *King*, *the Lord Keeper* North, *and Lord* Halliſax; there were ſome others preſent, whoſe faces he did not ſee; he does not remember a Clerk with them; *my Lord Keeper* asked ſome Queſtions, and ſo did the King; *He was preſſed much to confeſs*; *he claimed the Liberty*, *as an* Engliſh-man, *not to accuſe himſelf*; he was ſent to the *Tower*, and made *cloſe Priſoner*; he was kept in the ſtricteſt cuſtody for twenty Weeks; when he had been there, after the *Lord R.* was executed, and a little before *Col. Sidney was executed*, he had an intimation by a private note, that there was an intention to try him; for a *Miſdemeanour*, he was bailed out upon 30000 *l.*

After this, it happened, the *D. of M.* came in, and had a *Pardon*; but ſeveral coming to ſee him, he ſpoke ſome things

things freely, which did not please the Court; and *at the Old Dutchess of* Richmond's, *he spoke as if those* Gentlemen *that were put to Death, dyed unjustly.*

Whereupon, after the King was told this, by a *Lady*; he *would have him confess his being concerned in the Plot*; and a *Paper* was drawn to that purpose, *which the King would have him sign*, which he did.

A *Gentleman* (viz.) *Sr James Forbes*, came to him from the *Duke*, with the Copy of the *Paper* the Duke had signed, to own the *Plot*; as soon as he saw it, he said it was a *Confession* of the *Plot*, and according to the Law then in practise, it would hang him; because a Paper had been given in evidence against *Col. Sidney*; upon which he was condemned; for if a Paper, which was said, and not proved to be writ by him, could supply the place of a second Evidence; then a Paper which could be proved to be written and signed by the *D. of M.* might much more properly be made use of as his Evidence, to hang other People.

He said, he was told by *Sr James Forbes*, that the D. *was in a manner forced to do it*; *and perswaded and overborn*

in

in, by the Lord H. when Sr James Forbes went back, the D. was concerned to witness; and said, if he lived till next day, he would have the Paper again; and accordingly he went to the King, and told him he could not rest till he had it; The King with great indignation threw him the Paper, and bid him never see his face more; and he believes he did not; and so the Duke went away; and by that he escaped the Tryal then.

He was told by Mr Waller, who is since dead, that the Duke's owning the Plot to the King, was the cause of Colonel Sidney's death; for the King ballanced before.

He was after this, brought to a Tryal for Misdemeanour, and was convicted on the Lord Howard's evidence. He pleaded Magna Charta, that a Salvo Contenemento; but the Court fined him 40000 l. and to Imprisonment, till the Fine paid, and security for the good Behaviour.

The King made his choice of putting him in Prison, and he was committed to the Marshal's House in the King's Bench, where he was ten Months.

He offered several summs of Money, and they answered, they had rather have

him

*him rot in Prison, than he should pay the Fine.*

After this, they put him in the *Common Prison*, where he was kept ten or eleven Months; very close; then, they contrive a *Writ called a long Writ*, to reach his *Real and Personal Estate*, whilst he was thus a Prisoner.

After this, he heard a *new Witness appeared*, which was after the defeat of the *Duke* of *Monmouth*. He was sent *Close Prisoner* to the *Tower*, by the Lord *Sunderland's Warrant*, and put into such a Room, where he had no conveniency, and with two of the Rudest *Warders* in the *Tower*, to lie in the Room with him.

After seven or eight weeks, he was removed to *Newgate*, where he was kept close eleven weeks; his *Friends* offered Money for his Pardon to some in power; who were the Lord *Jefferyes* and Mr *Petre*; *the summ was* 6000 *l. and that was effectual*; It is not possible for a Man to suffer more than he did.

*By the help of the Money, on condition he would plead Guilty to his Indictment, he was to come off.*

*His Friends advised him to it, because*

*it*

*it could hurt none*; there being none living of those called the *Council of six*, but the *Lord Howard*.

Whereupon, pleading guilty, he was discharged; *paying* 3 *or* 400 *l. to* Burton *and* Graham *for the charge of his Pardon*.

As for the *Subject matter* of what he *confessed*,* no man will think he ought to be ashamed, that thinks my Lord *Russell* was Murdered; And he said, *this was the way that our* Ancestors *always took, when the* Soveraign Authority *came to so great a height*; *as* may be made out by many instances; he said, *Custom had made this the Law of* England; *and that all Civilized and well governed Nations about us, had used the same way*.

* The designing to rise in Arms to rescue the Laws and Liberties of his Country, when threatned with destruction.

Notwithstanding his *pleading Guilty*, he hath been very ready to secure the *Kingdom*; and *he was one of the two or three Men, that received Letters from* Holland *of this* Revolution; And, *he saith he thinks* King William's *coming into* England, *to be nothing else but the* Continuation *of the* Council of six; and if not, he desires to be better informed.

Being asked by the *Lord H.* how he came to send his *Wife* to the *Man, whom he thought was instrumental in obtaining the Paper, which he thought endangered his Life*; He answered, *did not he send his* Wife *to the* Lord Jefferies, Mr Petre *and others*? who should he send to but to those in power? and who could help him but those in power?

He did not think that the Lord *H.* struck directly at his Life, or that his *Lordship* had any personal Pique against him; *but against the Cause he was engaged in*; His *Wife* did go several times to the Lord *H.* and by her he believes he sent him thanks; *He knows no solid effects of his kindness; if there were, he desires the* Lord H. *to tell him in what*; He believes no part of the 6000 *l.* was given to the Lord *H.*

He never heard any thing of the *D.* of *Monmouth*'s *Confession* of the *Plot*, till after the Paper was signed by the *Duke*, and sent to him; He has heard it, as common talk, that the *Duke* had confessed a *Plot*, and that Mr *Waller* told him so indefinitely; he could not tell whether he meant before the signing the Paper, or no; He saith what the *Duke* did at that time was all of a piece; whether

speaking

speaking or writing; *he is sure that it was with the utmost reluctancy, that the* Duke signed the Paper.

He remembers no more in the *Cabinet Council*, but the Lord *Radnor*, besides those he has already named; but believes there were three or four more.

He was bailed the 28*th* of *November*, 1683. and *Colonel Sidney* he thinks was Executed, the 5*th* of *December* following.

The *Duke* of *Monmouth appeared very firm to him, and engaged to do his utmost to save Colonel Sidney.*

He saith he came out of the Tower some days before *Colonel Sidney* was Executed; he had an intention to have visited him, but his Friends thought it useless and dangerous to them; and that he might write any thing he had to say; Accordingly, he wrote to him, that he would come to him, if he desired it, but *Col. Sidney* charged him not to come, but to write, if he thought any inconveniency would come of it; The Messenger which brought him the Message before-mentioned, was Dr *Hall* now *Bishop* of *Oxford*; who applyed to the *Dutchess* of *Portsmouth* for his Release; but her answer to him, afterwards was,

*That she had tryed, and could do nothing, for they would rather have him rot in Prison, than have the* 40000 l.

Dame *Katharine Armstrong*, being examined, deposed, that *she demanded a Writ of Error of the Cursitor of* London, for Sr *Thomas Armstrong*, and told him she was ready to pay all due Fees; but he told her she must go to the *Attorney General*; and she demanded it publickly in Court of the *Lord Keeper North*; *but he said it was not in him to give, but the* King.

Mrs *Jane Mathews* being examined, said, that her *Father* was sent to Prison, and could have no Council admitted to him; nor any Friends speak with him; but in the presence of his *Keeper*; he had one Chain on him, and was kept close Prisoner; she saith, she questions not but to prove the Lord *Howard perjured*, for Sr *Thomas* could have proved by ten *Gentlemen*, and the Servants of the House, those base Reflections the Lord *Howard* made on him, to be falshoods.

She saith, *her Father* demanded his *Tryal*, and also *Counsel*, in the Court; but was denied both, the *Chief Justice Jeffries*

*Jefferies* telling him, *they had nothing but the Outlawry to go on.* *Withens*, *Holloway*, and *Walcot* were other three of the *Judges*; And she thinks, he was brought from aboard the *Yatch* by the Lord *Godolphin's* Warrant.

She saith, Mr *Richardson beat her Sister, while she was asking her Father Blessing.*

She saith, that her *Father* was at *Sparrow's* at Dinner, that day that the Lord *Howard* swore he was not; and she saith, that when her *Father* in Court said, *My Blood be upon you*; *The* Lord Chief Justice Jeffryes *said, let it, let it; I am Clamour proof.*

Mrs *Katherine Armstrong*, being examined saith, That Captain *Richardson* used her Father ill, and made him lie in a Chain on one Leg; and would not let her see him alone; and was rude to her, and *struck her in such manner, that she had so sore a Breast, that she could not put on Bodies in three quarters of a Year.*

She saith, she went with her *Mother* to the *Cursitor* of *London*, to demand a *Writ of Error*, but he refused it.

She went also on the same Errand to the *Lord Keeper North*, *Mr Attorney*, and *the Lord Chief Justice*, but had none.

Mr *Richard Wynne* declared, That he was *Solicitor* to *Colonel Sidney*; That the *Colonel excepted* against several of the *Jury*; so *some* as *not being Freeholders*, and others, as being in the *King's Service*, and receiving *Wages* from his *Majesty*.

That presently after the *Tryal*, the *Lord Chief Justice* sent him *Prisoner* to the *King's Bench*, for saying the *Jury were a Loggerheaded Jury*, & that They had not Evidence sufficient to find such a *Verdict*; or found a *Verdict* contrary to Evidence.

*Mr Wynne* said this, to *Angier* (the *Foreman of that murdering Jury*) and to *Gilsby* (*one* of the three *Carpenters which were upon that Jury*) and to another of their *Brethren* near the *King's Bench Court*; whereupon they went to lay hold upon *Mr Wynne*; at which instant *Mr Forth* (the *King's Joyner*) coming, interposed; upon which *Angier* said, Mr *Forth* will you assist this Man? he says *Colonel* Sidney's *Jury was a Loggerheaded Jury*. To which *Mr Forth* answer'd; I have nothing to do with the *Jury*, but *Gilsby knows that I know he is a Loggerhead*. Of this, They complained to *Jefferyes*, who committed *Mr Wynne* and *Mr Forth* to the *King's Bench*; It cost *Mr Forth* about 50*l.* whereof *Burton* had 24*l.* and he being a *Protestant Joyner*, he 'scap'd well out of their Hands, as times then went; especially *with that Trade*.

Mr *Serjeant Rotherham*, being examined, declared, That *he was of Counsel for* Colonel

nel *Sidney*, and drew a *Plea* for him; which the *Colonel* desired to have read, and threw it into the Court; It was to distinguish the *Treasons*, laid in the *Indictment*, and quoted the three *Acts* of *Treason*: But the Court told him, if the Plea had any slip in it, he must have Judgment of Death, pass on him immediately: After this he pleaded Not Guilty.

That *he demanded a Copy of the Indictment, as his due*; but the *Court* refused it him; That *Col. Sidney* told him, that they proved the Paper, they accused him of, to be his Hand-writing, by a *Banker*, who only had his hand upon a Bill. *Col. Sidney* quoted the *Lady Carr's Case* in the *King's Bench*, *Trinity Term*, 1669, *Anno* 21. *Car.* 2. wherein it was adjudged, *that in a Criminal Case, 'tis not sufficient for a Witness to swear he believes it to be the hand, but that he saw the party write it*: The words in the Case are, *That it must be proved, that she actually writ it, and not her hand*, ut credit.

[*Note, Colonel* Sidney *demanded the Copy of the Indictment, upon the Statute* 46 Edw. 3. *which allows it to all Men, in all Cases.*]

That *Colonel Sidney* ask'd him, with the rest of the *Council*, whether all the *Book* should be read at his *Tryal*; The

Council said it ought; The Book was by way of Questions, and meerly *polemical discourse of Government* in general; as far as *Serjeant Rotherham* could find, after reading in it several hours; He believes it consisted of seven or eight hundred Sheets.

Mr *Joseph Ducas*, upon his Examination, informed the *Lords* in substance as follows; That *Colonel Sidney* was taken up by a Messenger, before there could be any pretence of proof against him; for the *Lord Howard* (*the only Witness*) was not seized till fourteen dayes after.

That when *Sr Philip Floyd* seized and carried away *Colonel Sidney's* Papers, he promised him that the Trunk and Pillowbeere, in which they were sealed up; should not be opened, but in the *Colonel's* presence; but that promise was not performed.

That they *seized* the *Colonel's Goods* and *Money* in the City and Country; *five or six Months before any Indictment was found against him.*

That the *Colonel* was brought to *Westminster* the 7th of *November*; by an * *Habeas Corpus*

* A most clear demonstration, that the Prosecutors of this great Man had good Intelligence with the Grand Jury, & Influence upon them.

*ju*, ſent the day before; to be arraigned upon an *Indictment*; tho' no *Indictment* was then found againſt him; and they kept him in a *Tavern* in the *Palace-yard*, an hour; till they had got the *Grand Jury* to find the *Indictment*.

That the *Colonel* being carried to the *Court* of *King's Bench*; and the *Indictment* read; he demanded a Copy thereof; but the *Court* refuſed it. That the *Colonel* offered a *Special Plea* engroſſed in Parchment, and deſired it might be read; but the *Chief Juſtice* ſaid, that if the *Attorney General* demurred, and the Plea were over-ruled; Judgment of Death ſhould paſs upon him; (and *Wythens* ſaid, if your Plea be over-ruled, your Life is gone) and ſo he was forced to Plead *Not Guilty*.

That he challenged ſeveral of the *Jury*, as being the *King's Servants*; and others, as not being *Freeholders*; but was over-ruled therein. Some *Gentlemen* and very worthy Perſons were, for Faſhion ſake, put into the *Pannel* and called; but did not appear [*and it may be reaſonably thought they were never ſummoned.*]

That *Colonel Sidney* was informed, that when

when the *Jury* was withdrawn, the *Chief Justice*, under pretence of going to drink a Glass of Sack; *went to the Jury, when they were consulting about their Verdict.*

That when it was demanded of the *Colonel*, what he had to say, why Judgment should not pass; he urged several points of Law, but was over-ruled, in every thing.

*To this effect, was the Information of* Mr Ducas, *a very valuable* French Protestant Gentleman, *and* Colonel Sidney's *true Friend; To which I shall here subjoyn a few words, uttered by that great Man, at the time of his Condemnation*: I was brought to *Westminster* the 7th of this *Month* by * *Habeas Corpus*, granted the day before to be arraigned; when yet no Bill was *exhibited* against me, and *my Prosecutors*

* This leads me to correct an Error committed in the first part of this History, pag. 185, where I said, as I then understood it, that *Colonel Sidney* brought the *Habeas Corpus*; but it appears, that it was brought at the instance of his Prosecutors; And upon this occasion I shall confess another mistake, (& therein all with which I have been charged in the first part) that I said *Robert Masters*, one of Sr *J. Barnardiston's* Jury, was a principal Witness against *Colledge*; But I must acknowledge, that *Richard* was the Witness, & *Robert* the Jury man was his Brother, and only suck'd the same Milk with him.

*Secretors could not know it would be found, Unless they had a Correspondence with the Grand Jury*; That the *Jury* was not summoned by the *Bailiff*, but agreed upon by the *Under-Sheriff*, and *Graham* and *Burton*.

Upon the Sentence he expressed himself, in that excellent manner, which the Reader may turn to, in the first part of the *Display* of *Tyranny*, Page 200. Whereupon, the *Chief Justice*, (*foaming at the Mouth*) told him *he was mad*. To which *Colonel Sidney*, with great composure and gallantry of mind (stretching out his hand) said, My Lord, *feel my Pulse, and see if I am disordered*; *I bless my God, I never was in better Temper, than I now am.*

*Dr. Chamberlaine* being examined, deposed, That meeting the *Lord Halifax* in the Gallery at *White-hall*; he asked his Lordship whether the *Aldermen* were to blame that defended the *City Charter*, and he believes he did not blame them, but said the *King must*, *or will have the Charter*; he rather thinks it was, must have it; he believes he might tell this to the *Duke* of *Monmouth*, my *Lord Russell* and others.

That

That it was for Sr *John Lawrence's* ſake, he asked the *Lord Halifax*; and to him, he gave advice to take care in what he did, he being one of the *Committee* to defend the *Charter*.

A *Memorial* of the Numbers of *Charters*, *Diſpenſations* and *Pardons*, paſſed, between *October* 1682, and the time of the late *King's Abdication*.

THe *Marqueſs of Halifax* was Lord *Privy Seal* from *October* 1682. to *February* 1684. In which time 166 *Charters* were granted; whereof one paſſed immediate.

No *Diſpenſations* paſſed in that time.

In that time 47. *Pardons*, with *Non-Obſtante's* and *Clauſes* with *Diſpenſations*, were granted, whereof three paſſed immediate.

The *Earl of Clarendon* was *Lord Privy Seal* from *February*, 1684, to *December* 1685. in which time 94. *Charters* were granted; whereof 17 paſſed *immediate*.

No *Diſpenſations* paſſed in that time.

In that time 10 *Pardon*, with *Non-Obſtante's* and *Clauſes* with *Diſpenſations*, were

were granted, whereof two paſſed immediatè.

The *Lord Tiveot* and others, were *Commiſſioners* of the *Privy Seal*, from *December* 1685. to *March* 1686, 7. in which time, 26 *Charters* were granted; which paſſed in the uſual manner.

*Diſpenſations* with the *Penal Laws*, in that time were *Six*, whereof one was immediatè.

In that time 70. *Pardons*, with *Non-Obſtante's* were paſſed; whereof one of them immediatè.

The *Lord Arundel* of *Wardour* was *Lord Privy Seal*, from *March* 1686, 7. to 4 *Jacobi* 2. in which time, 56 *Charers* were granted, whereof 41. paſſed immediatè.

*Diſpenſations* in that time were 35. whereof 3 paſſed *immediate*.

In that time were 47. *Pardons* with *Non-Obſtante's paſſed*; whereof 25 paſſed *immediate*.

*Theſe are the heads of the Earl of Stamford's Report, which being read in the* Houſe of Lords, *the ſame, was by Order, ſent down to the* Houſe of Commons, *for their Information in theſe Affairs.*

Copies

Copies of ſome Papers mentioned in, or relating to the forgoing Informations.

Copy of the *Advertiſment* in the *Gazette*, Number 1880. *November* 26. 1683. relating to the *Duke* of *Monmouth*, mentioned in the *Examinations* of Mr *Row* and Mr *Yard*.

*White-hall, November* 25. His *Majeſty* having this afternoon called an *Extraordinary Council*, was pleaſed to acquaint them; that the *Duke* of *Monmouth* did the laſt night ſurrender himſelf to Mr *Secretary Jenkins*; having before writ a very ſubmiſſive *Letter* to his *Majeſty*; entirely reſigning himſelf to his *Majeſty's* diſpoſal; That his *Majeſty* & *his Royal Highneſs* went down to Mr *Secretary's* Office, where the *Duke* of *Monmouth* was; who ſhewed himſelf very ſenſible of his crime in the late *Conſpiracy*; making a full Declaration of it; And that having ſhewed an extraordinary penitence, for the ſame, *and made a parti-*

*cular*

*cular submission to his* Royal Highness, for his misbehaviour towards him; His *Majesty* and *his Royal Highness* received so much satisfaction, that *upon his Royal Highnesse's desire and entreaty*; His *Majesty* was pleased to Pardon the said *Duke*, and thereupon, did order Mr *Attorney General*, to stop further proceedings against him; *but ordered he should proceed, notwithstanding, against all the rest of the* Conspirators.

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*Copy* of the *Paper*, mentioned in the preceding *Informations*, was wrote by *King Charles* the seconds's own hand; who imposed, upon the *Duke* of *Monmouth*, to transcribe and sign it.

I have heard of some reports of me, as if I should have lessened the late *Plot*, and gone about to discredit the evidence given against those, who have dyed by Justice; your *Majesty and the Duke know*, how ingeniously I have owned the late *Conspiracy*; and tho' I was not conscious of any design against your *Majesty's*

jeſtys Life, yet I lament the having had ſo great a ſhare in the other part of the ſaid *Conſpiracy*.

*Sr*, I have taken the Liberty to put this in writing, for my own vindication; and I beſeech you to look forward, and endeavour to forget the faults you have forgiven me; I will take care, never to commit any more againſt you; or come within the danger of being again miſled from my duty; but make it the buſineſs of my Life, to deſerve the Pardon, your *Majeſty* hath granted to, your dutiful,

*Mounmouth.*

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**Copy** of a *Paper* delivered to the *Lord Keeper North*, the *Lord Chief Juſtice Jeffryes* and the *Attorney General*; by the *Lady Armſtrong*, on behalf of her *Husband*, Sr *Thomas Armſtrong*.

I am informed, that by the Common Law of *England*, any Man that was *outlawed*, in *Felony* or *Treaſon*, might bring

bring a *Writ of Error*, to reverse the *Outlawry*; which was to be granted *ex debito Justitiæ*; tho' it may be, the sueing forth such a *Writ of Error* to the *King*, might be by way of *Petition*; As in a *Petition* or *Monstrans de droit*, for Lands; And so it was resolved, in *Ninian Melvin's Case*, *Co.* 4. *Just.* 215.

Next, by the *Common Law*, if any Man were in *England*, at the time of the Exigent awarded; and went out of the Realm after that, and before the *Outlawry* pronounced; he could never assign that for Error, that he was beyond Sea at the time of pronouncing the *Outlawry*; And the reason is, because he was here, at the awarding of the *Exigent*, and might reasonably have notice of it.

On the other side, if any Man were out of *England*, during the whole Process, and pronuntiation of the *Outlawry*; it was never yet a doubt, but that was *Error*, and might be assigned for *Error*, either by the party, or by his *Heir*, at the *Common Law*; and so continues to this Day, and was not long since adjudged in *O. Kerney's* Case, the

*Irish man, who came in two Years after the Outlawry.*

But that Case differed greatly from this; *O. Kerney*, being a Friend of Holy Church

Then comes the *Statute* of 5 & 6. *Edw.* 6. *Cap.* 14. and enlarges the Law, for the benefit of the outlawed person; and *gives him liberty to assign for Error, that he was beyond Sea at the time of the Outlawry pronounced*; which he could not do, by the *Common Law*, if he went away after the *Exigent*: For if he went before the *Exigent*, that was *Error* by the *Common Law*, before the *Statute*; and so continues.

Then comes the *Proviso*, and saith, *That he must come in, within a Year, and render himself, to be entituled to the benefit of that Act*; which was, to *assign* for *Error, that he was beyond Sea, at the time of the Outlawry pronounced*; So that upon this State of the Law, and my *Husbands* case; he being beyond Sea at the time of the *Process*, and at the time of the *Outlawry* pronounced; It is conceived, he is well entitled to assign this for *Error* at the *Common Law*, without any aid of the *Statute*; tho' the *Proviso* in that *Statute*, should be ruled against him; which, with submission, it is the opinion of many learned Persons in the Law, that he is within the intent and meaning of that *Proviso*, for many Reasons,

ſons, too long to trouble your *Lordſhip* with now; Therefore I do hope, that this Caſe of my *Husband's*, being the firſt Caſe, that ever any Man was executed upon an *Outlawry* (*that did not deſire it*) may have that weight with your *Lordſhip* which it deſerves; And do hope, that your *Lordſhip* will ſo adviſe the *King*, in matter of Law) *whoſe Counſel you are*) that my *Husband* may have a *Writ* of *Error* granted him, and *Counſel* aſſigned him, to argue theſe points; as by Law hath been allowed to *Criminals*, in *Capital Caſes*; with, whatever elſe ſhall appear upon the Record of Outlawry produced; which, as yet, my *Husband*, nor any for him ever ſaw.

*Holloway*, a little before being in the ſame condition, refuſed a Tryal, and ſo was executed upon the Outlawry.

## Colonel *Sidney*'s Plea drawn by Mr Serjeant *Rotherham*.

PRedict Algernon Sidney *dicit quod per Statut in Parliamento inchoat & tent apud Westm octavo die Maij Anno regni domini Regis nunc decimo tertio, & ibi continuat usq; tricesimum diem Julij tunc prox sequen & ab eodem tricesimo die Julij Adjornatum usq; vicesimum diem Novembris tunc prox sequen Intitulatum,* An Act for Safety and Preservation of his Majesty's Person and Government, against Treasonable and Seditious Practices and Attempts, *inter alia, Ordinat & inactitat fuit per Autoritatem Parliamenti predicti quod nuli. Persona sive Personæ virtute Actus predicti incurreret aliquas penalitates in Actu predicto mentionat Nisi Ipse vel Ipsi prosecut esset vel essent infra sex Menses prox offens commiss. & indictat esset superinde infra tres Menses post talem prosecutionem, aliquo in Statuto predict content in contrarium non obstante, Et predictus* Algernon *ulterius dicit quod ipse prosecut fuit & commissus Prisonæ Turris de* London *pro Offens. in Indictamento predict mentionat*

*nat vicesimo sexto die Junij ultimo preterito & non anta & ibidem continuat Prisonar huousq; Et quod ipse predict* Algernon *non fuit indictat pro aliquo vel aliquibus Offens in Indictimento predict mentionat in fra tres Menses prox post prosecutionem predict Et hoc predict* Algernon *parat est verificare unde petit judicium si ipse predict* Algernon *quoad aliquod Crimen sive Offens in Indictamento predict mentionat quod Crimen vel Offens non fuit Alta Proditio ante confectionem Statuti predict respondere debeat et quoad omnes Proditiones Crimina & Offens in Indictimento predict mentionata quæ non fuere vel fuit alta proditio ante confectionem Statuti predict idem* Algernon *dicit quod per Statutum in Parliamento tento apud Westm in Com Middlesex in Festo sancti Hillarij Anno regni Domini Edwardi nuper Regis Angliæ tertij Anno regni sui vicesimo quinto editum intitulatum,* A Declaration; Which Offences shall be judged high Treason, *inter alia, inactatum fuit Auctoritate ejusdem Parliamenti quod si ullus casus supposit esse Proditio qui non specificatur in eodem Statuto acciderit coram aliquibus Justitiarijs, Justitiarij moram facient Anglice* shall tarry *sine aliquo progressuad Judicium Anglice* going to Judg-

ment *de predictâ proditioni nsqu; Causa monstretur & declaretur coram Rege & Parliamento suo, Quodq; per Statutum in Parliamento tent apud West in Com Midds. quinto die Octobris Anno regni Dominæ Mariæ nuper Reginæ Anglæ primo intitulatum,* A Repeal of several Treasons Felonies and Premunires *inactit fuit inter alia, Autoritate ejusdem Parliamenti quod abinde nullum factum vel Offens. existen per actum Parliamenti vel Statut fact Proditio per Verba Script Notationem Anglice Ciphering fact aut aliter quocunq; capt habit Census Anglice deemed vel adjudicat esse alta Proditio, nisi tantum tal. quæ declarantur & exprimuntur esse Proditio in vel per Actum Parliamenti vel Statut factum in Anno vicesimo quinto regni prenobilis Regis Edwardi tertij tangen vel concernen Proditiones vel Declarationes Proditionis & nul al. nec quod aliquæ pæne mortis penalitates vel forisfactur in aliquo modo sequuntur Anglice ensue vel sint alicui Peccatori Anglice Offender vel Peccatoribus Anglice Offenders pro facien vel committen aliquam Proditionem aliter quam tal. quæ in Statuto predicto facto in dicto Anno vicesimo quinto regni dicti Edwardi Regis ordinat*

&

& provis, aliquo Actu vel Actus Parliamenti Statut vel Statuta ad aliquod empus antea habit vel fact post dictum vicesimum quintum Annum dicti nuper Regis Edwardi tertij; vel aliquam al Declarationem vel materiam in contrarium aliquo modo non obstante. Et predictus Algernon dicit quod ipse non est culpabilis de aliqua vel aliquibus Proditione vel Proditionibus in Indictamento predicto mentionat quæ specificatur vel specificantur in Statuto ultimo mentionato modo & forma prout in Indictimento predicto mentionat Et de hoc ponit se super Patriam.

The Names of the *London* Grand-Jury returned, *July* 1683. When the Conspirators had decreed the Murdering my Lord *Russell*.

*Richard Alie*, Esq;
*Peter Parwicini*,
*Benjamin Skutt*,
*Philip Harman*,
*Benjamin Thorowgood*,
*William Longmore*,
*John Price*,
*Francis Brerwood*,
*William Withers* Seni.
*William Lovel*,
*John Debnam*,
*Percival Gilborne*,
*Henery Wood*,
*John Cooper*,
*Samuel Newton*,
*Henry Wagstaffe*,
*Thomas Blackmore*,
*Thomas Larner*,
*John Potts*.

} Sworn.

*Leonard Bates*,
*John Femill*,
*Barth. Ferryman*,
*Spencer Johnson*, and
*James Kelke*.

The

# The Pannel of Jurors pick'd for the Tryal of my *Lord Russell*, in *July* 1683.

*Colman-Street-Ward.*

SIR *James Ward*,
Sr *Tho. Davall*,
*Arthur Baron*,
*Thomas Moffis*,
John Martin,
*Thomas Hadges*,
*Will. Fitzacherly*, &
William Rouse,

*Tower*-Ward.

*Peter Joye*,
*John Pelling*,
*Tho. Porey*,
*Will. Winberry*,
*Tho. Normansel*,
*Richard Meynell*,
*William Pellatt*,
Jervas Seaton, &
*Richard Burden*.

*Algate*-Ward.

*Jacob Lucy*,
*Peter Jones*, and
*William Crouch*,

*Billingsgate*-Ward.

*Henry Loades*,
*Hugh Strode*,
*Robert Mellish*, and
*Abraham Wright*,

*Broadstreet*-Ward.

*Peter Aylesworth*,
*William Danes*,
*John Steventon*,
*William Rutland*,
William Fashions,
Thomas Shorte,
*Samuel Skinner*,
*Theophilus Man*,
*George Baker*,
*Richard Kent Ar.* &
*Gerlington Chapman*,

Dowgate

Dowgate-Ward.
*Richard Hamond*,
*Fr. Chamberlain*,
*John Fenew*, and
*John Bridges*.

Ward of *Bishopsgate* within.
*John Busson*.
*Joel Andrews*, and
*Ralph Izard*.

Bridge-Ward.
*John Short* senior.
*Thomas Nicholls*, &
*Roger Mingay*.

*Candlewick*-Ward.
George Toriano,
William Butler,
*William Parker*, and
James Pickering.

*Limestreet*-Ward.
*John Hall*,
*Matthew Gibbon*,
*Thomas Angier*,
*Robert Masters*,
*Luke Pead*,
*Christopher Johnson*,
*Philip Perry*,
*Stephen Gittings*, and
*William Warren*.

*Walbrooke*-Ward.
*John Westbrooke*,
*John Tempest*,
*John West*, and
*Edward Le Neve*.

Langborne-Ward.
*William Gerrard*,
*Anthony Mingay*.
*Nathaniel Hornby*,
*Henry Collyer*,
*James Smith*,
*Thomas Lowfield*,
*Thomas Jenny*, &
*Samuel Hanckee*,

*Cripplegate*-Ward.
*Robert Aske*,
Thomas Jeve.
Hugh Noden,
Robert Brough,
*John Mallory*,
*Thomas Yate*.
*William Crispe*,

*John*

*John Walkly,*
Thomas Oneby,

Ward of *Farringdon* within.

*Francis Griffith,*
*Peter Pickering,*
*Edward Rigby,*
*Richard Hoare,*
*Thomas Barnes,*
*Henry Robins,*
*Henry Kempe,*
*John Owen,*
*William Simonds,*
*Thomas Grice,*

Ward of Farringdon without.

*Paul Weeks,*
*Roger Reeve,*
*Edw. Reddish,*
*Edw. Kempe,*
*Will. Brown,*
*Ambros. Istead,*
*Thomas Fowles,*
*Thomas Hamond,*
*Thomas Fitzer,*
*Thomas Dring,*
*Henry Baldwin,*
*Robert Fowles,*
*Thomas Rawlinson,*
*William Warne,*
*Valentine Castillion,*
*Jervas Wilcox,*
*James Smith,*

Ward of *Aldersgate* within.

*Peter Floyer.*

Ward of *Aldersgate* without.

*Robert Scott,*
*John Andrews,*
*Jeremiah Wright,*
*Jacob Sheldrake,*

*Cordwayner* Ward.

*Thomas Coulson.*

*Unity* Ward.

*George Peek.*
*John Hoyle,*

Ward of Castlebaynard.

Sr *William Dodson,*
Sr *Edm. Wiseman,*
*William*

*William Goslin*, *Christopher Pitt*,
*Nicholas Alexander*, *Robert Beddingfield*
*Nicholas Charleton*, *Thomas Warren*,

By, *Peter Rich* Esq; and Sr *Dudly North*, Knight, } Sheriffs.

The Names of the Grand-Jury at the Sessions the 14th of *October*, 1685. when the Conspirators had resolved to Murder *Alderman Cornish* and *Mrs Gaunt*.

*PErcival Gilborne*, *Robert Blackmore*,
*Bart. Ferriman*, *Joseph Caien*,
*Thomas Blackmore*, *W. Withers*, Junior.
*Thomas Simonds*, *Thomas Deacon*,
*William Watton*, *Richard Browne*,
*Thomas Barnesly*, *Thomas Mills*,
*John Greene*, *John Bernard*,
*Thomas Amy*, *William Fownes*,
*Joseph Baggs*, *John Luker*,
*John Reynolds*,

The

The Pannel of *Furors* for the *Tryal* of *Alderman Corniſh*, in *October* 1685. returned out of moſt of the Wards of the City, by the particular care of Sr *Benjamin Therowgood*, in regard that Mr *Corniſh* had been one of his Predeceſſors.

(See this page 289.)

| | |
|---|---|
| Sir *William Ruſſell*, | *William Gore*, |
| Sr *Mich. Hicks*, | *John Kent*, |
| Sr *John Mathews*, | *Edward Griffith*, Eſq; |
| Sr *William Dodſon*, | *William Withers*, Sen. |
| Sr *Thomas Griffith*, | *John Midgly*, |
| Sr *Edmund. Wiſeman*, | *John Carpenter*, |
| Sr *John Clarke*, | *Franc. Chamberlain*, |
| Sr *Thomas Vernon*, | *Peter Joy*, |
| Sr *Edward Bovereſt*, | Thomas Langham, |
| *Richard Alie*, Eſq; | *George Toriano*, |
| *Ralph Box*, Eſq; | *Henry Loades*, |
| *Thomas Hartopp* Eſq; | *Robert Bedingfeild*, |
| *Thomas Fowle*, | Ambroſe Iſtead, |
| *Arthur Baron*, | *William Butler*, |
| *Benjamin Skutt*, | *Kenelm Smith*, |
| Thomas Rawlinſon, | *Ralph Lee*, |
| *John Shorte*, Senior, | *William Moyer*, |
| *Thomas Goddard*, | *Robert Scott*, |

*William*

William Warne,
Thomas Shorte,
Fermingham Chaplin,
John Jenew,
James Pickering,
James Smith,
Thomas Lofeild,
James Woods,
Tho. Pendleton,
Samuel Hinton,
Nicholas Smith,
James Smith,
Tho. Peircehouſe,
John Grice,
Thomas Oneby,
Richard Cotton,
Richard Hoare,
Roger Reeves,
William Crouch,
John Foſter,
Thomas Sergeant,
James Richardſon,
William Cloudſly,
Richard Holford,
Thomas Crane,
Lewis Wilſon,
Henry Wood,
William Tigh,
John Pelling,
Gervis Wilcox,
Jacob Sheldracke,
George Peck,
Francis Breerewood,
W. Longmore,
John Price,
William Fitzacherly,
William Faſhion,
Walter Alton,
Stephen Coleman,
Robert Clavel,
William Long,
John Wells,
Maurice Moſely,
John Pott,
Thomas Lardner,
James Kelke,
John Perrott,
Thomas Aſhby,
Samuel Skinner,
William Rouſe,
Noel Baſano,
Paul Sherman,
John Walkly and
William Humfreys.

The

## *The Pannel of* Jurors *returned for the Tryal of the Honourable* Colonel Sidney.

SR *Reignald Foster* of Criplegate Bar.
Sr *John Musters*, of Hornsey Knight.
*Peregine Bertie*, } of St Martins
*Richard Morely*, } in the Fields,
*James Supple*, of the same, Esqrs;
**John Angier**, *Carpenter*; }
*Richard Fisher*, } of *Westmin-*
*John Kirke*, } *ster.*
*Christopher Granger*, }
*John Nicholl*, of Finchley.
*William Cleeve*, }
**Richard White**, } of Criplegate
Sr *Charles Gerard*, of Harrow on the Hill.
Sr *Richard Fisher*, } of Clerkenwell.
Sr *Robert Dacres*, }
Sr *John Kirke*, of St Martins in the Fields.
*John Wells*, of Marybone.
*Samuel Linne*, senior, }
*Michael Todd*, } of Clerkenwell.
**William Linne**, }
**Laurence Wood**, of Holborne, (*Taylor*)
*John Powel*, of the Strand.
*Hugh Hamersly*, of the same.

*John*

*John Cannon*, of St Giles in the Fields.
Sr *John Brattle*, of Enfield (an Officer in the Mint)
Sr *John Downton*, of Isleworth,
Sr *William Hill*, of Tedington.
*Ralph Hawtry*, of *Ruslip*, Esq;
*Francis Knowles*, of Covent-Garden, Esq;
*Thomas Hinton*,
*John Merridel*, } of St Giles in the Fields.
*John Bailey*.
Abel Andrews,
*Reuben Bourne*, } of Edmonton.
Emery Arguise, of Westminster (*Carpenter*)
*Richard Cooper*, of St Martins in the Fields.
*Thomas Row*, of Horneſey, Esq; (*a Captaine in the Army*)
*John Bathurſt* of Edmonton, Esq;
*Richard Pagitt*,
*Nehemiah Arnold*. } of Westminster, Esq;
*William Freeman of Hatton-Garden Esq*;
*William Avery of Enfield*.
*Francis Stevens of Westminster Esq*;
*Thomas Phelps*
*John Smalbone*
*Tho. Whitfield* } *of St Martins in the fields.*
*John Haynes*.
*Charles Monke*.
*John Sharpe of Wapping* (*Lieutent Colonel*)

Josia

Josia Clarke of Chiswick.
William Wayte of St Chements Danes (keeper of the Privy Garden.)
John Bignal Senior. } of St Martins in the Fields,
George Glisby (Carpenter) }
Nicholas Barter }
Tho. Roberts ——— }
John Hazard (Vintner.) } of St Clements Danes.
Jeremi. Playner, (Vintner) }
William Reeves. }
William German
Tho. Claxton of Harrow Esq.
Charles Pryor of Highgate,
Tho. Curtis of St Clements Danes.
——— Bradshaw of the Strand Esq;
Tho. Kensey of St Giles's in the Fields Esq;
Richard Taylor of Chiswick Esq.
William Groves of St Clements Danes,
John Bert of the Savoy.
Samuel Lynne junior } of Holborne,
Richard Bromfield. }
Edward Hampsted, } of St Giles,
Benjamin Bolsby. }
Christopher Chambers }
Arthur Blyth of Paddington,
John Leeson of the Strand.
Tho; Elton of Stepney.
Nicholas Grice of Hesson.
Simon Smith of Westminster Esq.
Bartholomew Parr of East Smithfield,

*Francis Child of Acton Gentleman,*
*John Davis*
*John White* (the **King's Founder**) } *of St Martins.*
*Stephen Philips.*——
*Richard Foster of Westminster.*
*Tho. Graves,*
*John Singleton,* } of the *Strand.*
*Tho. Tatton* Gentleman,
*Robert Longland* Gentleman,
*James Blagrave* Gentleman, } *of St Giles.*
*William Abel.*

To draw to (what I have impatiently desired) a conclusion; It is a sad Truth, that the *Conspirators* had long resolved *to go to hanging work*, & Sr *Roger L' Estrange* could more certainly predict the time, than *Mr Gadbury* could that of the *Birth* of his *Prince of Wales*; for at that very Juncture, when it was resolved, That Sr *Dudley North* must be Sr *John Moores Sheriff*; *We had the direful* Consequences foretold in the *Observator*, of *May* 20. 1682, *Number* 140. in these words. *If it should please God to send us* SEASONABLE SHERIFFS, *and faire Play for our money, there are set a foot so many Titles in*

The same celebrated *Author*, told the World whom he esteemed his *Seasonable Sheriffs*; for

*in competition for the* Gallowes, *that it would be a hard matter to ſettle their* Claimes, *and ſay, who ſhould go firſt.* And We know that the *Gentleman* was a Miniſter of State in that Reign: But to allow every thing its due weight, and to ſet the Tragedy of that diſmal day In its proper Light; I ſha here revive the Remembrance of the *dying Teſtimonys* of very ſerious Perſons who then loſt their Lives, for that *horrid Conſpiracy* againſt the late *Kings Charles and James the Second*; which frighted the *Cheſhire Grand Jury*, and with them, a great part of the *Kingdom*, *out of their VVits.*

'Tis well known, that the *VVitneſſes* againſt them, *ſwore for their own Lives*, with halters about their Necks; and its as true, that moſt of the Witneſſes had talk't at a mad rate, in the hearing of ſome of thoſe whom they deſtroyed; in his *Obſervator* of *May* 17th 1684. he ſayes; Prithee will thou ſet their *Corniſh* and *Bethel* their *Pilkington* and *Shute*, againſt *Our North* and *Rich*; *Our Daniel* and *Daſhwood*; and ſay which of theſe *Sheriffes* are the likelyer Men, to juggle *Proteſtants* out of their Lives. [*But the Poor* VVhigg *durſt not for his Eares, at that day, anſwer this enſnareing Queſtion; for if he had, and done it honeſtly, it might have coſt him his Head.*]

But see, what those *dying Protestants* in a most solemn manner declared, with their last Breath.

Mr *Colledge* took it upon his death, That he was never engaged in any manner of *Plot* or *Conspiracy* against the *King*, the *Laws* or the *Government*; or knew of any, *except that of the Papists*; That if it had been true, *that he was to have seized the* King; *he knew not of so much as one single Person, that was or would have stood by him, in that attempt.*

Captain *Walcot* denyed any design of *killing the* King, *or of engaging the* Guards, *whilst others killed him*; And said, that *the Witnesses invited him to Meetings*, where some things were discoursed of, *in order to the asserting our Liberties and Properties*; which we lookt upon to be violated and invaded:——That *They importuned and perpetually solicited him, and then deliver'd him up to be hang'd*——That *They combined together to swear him out of his Life, to save their own*; and that they might do it effectually, *They contrived an Untruth.*——That he forgave them, *tho' guilty of his Blood*; But, withal, earnestly *begg'd*; *That they might be ob-*

*observed, that Remarks might be set upon them, whether their end be peace:* and he concluded (with what made *Sr Roger L'Estrange* a great deal of *Sport*, but yet *Heaven* has made it good) That *when* God HATH A WORK TO DO, HE WILL NOT WANT Instruments.

Mr *Holloway* declared, that *Mr West* proposed the *Assassination, but none seconded him.* —— That he could not perceive that Mr *Ferguson* knew any thing of it; and *Holloway* said, *It was our design to shed no Blood*; He being interrogated, by *Mr Ferguson's* Friend, *Mr Sheriff Daniel*, whether he knew *Ferguson*; He answer'd *that he did know him, but knew him to be against any design of killing the King.*

Sr *Tho. Armstrong*, at his death spoke thus; Mr *Attorney* said, *I was accused for being one of Those who were to kill the* King; *I take God to witness, I never had any such design*; nor ever had a thought to take away the *King's* Life; Neither ever had any man the impudence to propose so barbarous and base a thing to me.

Mr

Mr *Nelthorp* at his death in 1685, ſaid, *I can with great comfort appeal to the great* God; *before whoſe Tribunal I am to appear; what I did was in the ſincerity of my Heart, thinking it my duty to hazard my Life, for the Preſervation of the* Proteſtant Religion, *and the* Engliſh Liberties; *which I thought invaded, and in great danger to be loſt*; As to the deſign of *Aſſaſſinating* or *Murdering* the late *King*, or his preſent *Majeſty*; it was a thing I always deteſted; and I never was in the leaſt concerned in it; Nor *did I believe there was ſuch a deſign*,——I dye in Charity with all the World; and can readily and heartily forgive my greateſt Enemies, and even thoſe that have been the Evidence againſt me.

Mr *Rouſe* declared, that he was told, that *They did not intend to ſpill one drop of Blood*; and affirmed that *Lee*, the *Witneſs* againſt him, did (by his Evidence) make him the *Author of the very words, that came out of his the ſaid* Lee's *own Mouth*.

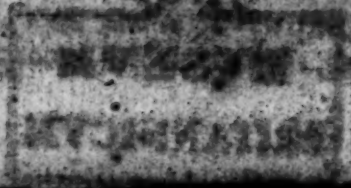
Mr *Richard Rumbold* (who at his death, at *Edenburgh*, in 1685, was found to be

a very brave Man, & most serious *Christian*, and had been represented as *the main Promoter of the Murdering design*) with his last breath desired all to believe his *dying Words*, and therewith affirmed; *that he never directly, or indirectly, intended such a Villany as the death of* King Charles *the* second, *and the* Duke *of* York; but declared, that *he abhorred the thoughts of so horrid an intention*: That he was sure this *Truth*, would *at the great day*, be manifest to *all Men*; And he concluded, that *he dyed in the defence of the just Laws and Liberties of the Nation*; and said, *that for that Cause, were every Hair of his Head and Beard a Life, he would joyfully sacrifice them all*; and wisht he had a *Limb* for every *Town* in *Christendom*.

To conclude, these solemn, serious, dying *Declarations*, *Protestations* and *Appeals* to the *heart-searching God*; have always, out-weighed with me, the Evidence of those two or three *Witnesses*, who swore these Persons out of their Lives, and by so doing saved their own. And I did and do most stedfastly believe, that the only *Plot* in that day, was the same, which the *Almighty* has at length

length owned, and most signally prospered, in the hand of *our gracious August* and *Rightful Soveraign King William*, I mean, the rescuing the *Protestant Religion* and the *Laws* and *Liberties* of *England*, from a most impetuous Torrent of *Popery* and *Tyranny*; wherewith they were very dangerously threatned. And methinks it should even convert a *Tory* (unless his *Brains* were pick'd out of his *Skull*, by him who pick'd the *Guineas* out of his *Pocket*) when he casts his Eye upon that apposite & Emphatical Expression in the *Observator*, *vol.* 2. *Number* 125. To deal freely with thee, TRIMMER, I have more Faith, in the Words of one dying Traytor, under the stroke of Justice, than of twenty Living.

## Errata's.

PAge 34. last Line read *Closet*. p 63 first line r *and he be found*. p 91 line 9 dele *that*. p 105 l 2. dele *us*. p 151 l 25 r *acquainted with*. p 203 l 5 for *with* r *which*. p 213 l 20 for *it is* r *its*. p 241 l 14 r *possessed*. p 247 l 22 r *always had*. p 252 l 25 r *every day from that* p 253 l 3 r *Sr Robert*. p 277 l 26 r *Gold-Finch*. p 288 l 9 r *were not sent*.

FH
MVSEVM
BRITANNICVM